C. 79071/30 [No. 65]. No. 1 PROOF.

COLONIAL OFFICE

to

FOREIGN OFFICE.

[*Answered by Nos.* 3 ~~*C. 89071/31 [No. 5]*~~ *and No.* ~~*38171/34 [No. 1]*~~.] 8

SIR, Downing Street, 2nd March, 1931.

I am directed by Lord Passfield to refer to your letter of the 17th of October, 1930*, regarding the claims of the heirs of the Ex-Sultan Abdul Hamid, and to enquire if Mr. Secretary Henderson can state whether the unpublished record of the proceedings of the Lausanne Conference from February to July, 1923, contains any material which would throw any light on the present claims.

I am, &c.,

J. E. W. FLOOD.

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* No. C. 79071/30 [No. 44] not printed.

Abdul Hamid—(C.21839/47). 12.

C. 79071/30 [Nos. 66 and 67]. No. 2. PROOF. 2

THE SECRETARY OF STATE

to

THE HIGH COMMISSIONERS.

1. PALESTINE (No. 170).
2. IRAQ (No. 132).

1. [*Answered by No.* 5 .]
2. " " " 6

SIR, Downing Street, 3rd March, 1931.

With reference to my despatch [No. 126] [No. 92] of the 11th of February regarding the claims of the heirs of Ex-Sultan Abdul Hamid, I have the honour to enclose for your information a copy* of the *Notes d'Audience* filed on behalf of the claims.

2. I have to request that a record may be prepared at your convenience of the properties claimed and those taken over under Article 60 of the Treaty of Lausanne, distinguishing between those included in the Iradés and those said to have been the private property of the Sultan *ab antiquo* and also defining what, if any, Wakfs exist on the properties and have to be maintained pursuant to the last sentence of paragraph 2 of Article 60 of the Treaty of Lausanne.

I have, &c.,
PASSFIELD.

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* Not reprinted.

Abdul Hamid—(C.21839/48). 12.

C. 89071/31 [No. 5]. No. 3. PROOF.

MR. G. W. RENDEL (FOREIGN OFFICE)

to

MR. H. R. COWELL (COLONIAL OFFICE).

[*Answered by 89071/31 [No.10].*]

DEAR COWELL, Foreign Office, S.W.1, 16th April, 1931.

I am writing with reference to Colonial Office official letter of 2nd March* and to your letter of 28th February† to Dr. Brown (who sent a copy to Fitzmaurice), regarding the claims of the heirs of Abdul Hamid.

You are so familiar with the history of the case that it is unnecessary for me to go back over the ground. Brown, however, recently showed some nervousness lest the heirs might attempt to take the case further, in particular in respect of the so-called *ab antiquo* properties. In that event he anticipated that the heirs would base themselves on the last paragraph of Article 60 of the Treaty of Lausanne. We think however that, in so far as any future proceedings instituted by the heirs took the form of an appeal against the recent decision of the Mixed Arbitral Tribunal, any argument based on Article 60, even if sound in itself, would be rendered nugatory by the fact that the Tribunal based its decision largely on Article 65; and we see no way in which the decision of the Tribunal on this point could be successfully contested. As regards the form in which such proceedings might be brought, Brown suggested that the heirs might seek to appeal to the Permanent Court of International Justice. Such an appeal, we think, could only be brought if the Turkish Government took up the case on behalf of the heirs as a governmental claim against His Majesty's Government and if His Majesty's Government for their part agreed to accept reference to The Hague—both exceedingly unlikely contingencies even apart from the fact that the majority of the heirs not being Turkish nationals the Turkish Government would have no right to take up the case on their behalf. Brown further put forward a suggestion that His Majesty's Government might consider an *ex-gratia* payment to the heirs. Fitzmaurice and Helm therefore discussed the whole question at length with Dr. Brown on 4th February, in the light of these apprehensions.

The conclusion reached in the course of these discussions was that the chances of the heirs being able successfully to carry their case any further against His Majesty's Government were exceedingly small and that, although they *might* institute proceedings in the local courts in Iraq, Palestine or Cyprus, it was improbable that they would do so, and exceedingly unlikely that, if they did, they would succeed. At the same time Helm on instructions made it clear that, if, as we believe to be the case, the heirs have no legal case, the Foreign Office were strongly of opinion that, from the political standpoint, no question of an *ex-gratia* payment to them could be considered.

Such being the position, the view was held that we were not called upon to take any further action at the moment, but that, if and when the heirs should make a further move, the Foreign Office might or might not have to enquire into the situation and possibly endeavour to ascertain locally how far the *ab antiquo* properties still exist and are identifiable as having belonged to the Turkish royal family, and as not having been transferred to the Turkish Ministry of Finance. We were, however, satisfied that the time had not yet come for such an enquiry.

In these circumstances we are inclined to think that the action which, as stated in your letter to Brown, you have asked Iraq and Palestine to take, and which Brown at the meeting desired that we should initiate, may possibly prove to have been unnecessary. If, as we think, the heirs have no legal case against His Majesty's Government as such, they can only take action in the Iraqi or Palestine courts, and in that event the burden of proof would, almost certainly, be on *them* in the first instance to establish their claim to any of the *ab antiquo* properties.

As regards the enquiry in your official letter of 2nd March to us, I find that we have no unpublished record of the proceedings of the second part of the Lausanne Conference. I enclose, however, for your information, the relevant extract from a telegram of 3rd July, 1923, from Rumbold which shows that, although there was produced at Lausanne a list of *ab antiquo* properties, there was no mention therein of any such properties in Iraq or Palestine, and that the British delegation at Lausanne believed that all Civil List property in those countries would be acquired gratuitously by the Iraqi and Palestine Governments. Further records of the discussions at Lausanne concerning what was originally Article 65 (but is now Article 60) of the Treaty are

* No. ~~C. 79071/30 [No. 65]~~ 1.

† No. C. 79071/30 [No. 64]. Not printed.

contained in the *Recueil des Actes de la Conférence de Lausanne, Deuxième Série*, published by the French Government. It seems unnecessary for me to trouble you with these at the present moment. We shall, however, be happy to lend you our copy of the *Recueil* if you wish to study it. We only have one.

Yours, &c.,

G. W. RENDEL.

Enclosure in No. 3.

Extract telegram No. 246 of 3rd July, 1923, from Sir H. Rumbold, Lausanne.

Article 65.—Ismet Pasha accepted the draft text agreed upon by the experts in their report of 29th June (see my despatch No. 217 of 30th June), but he explained that he had been in communication with Monsieur Veniselos regarding similar property in Greece and that they hoped to agree, within the next few days, on the clause relative to such property which could be added to that concerning civil list property in the detached territories in Asia. It was arranged that if they reached such an agreement they should communicate it to Secretary-General, without necessitating another meeting of the committee. My colleagues and I thanked Turkish delegation for communicating to us Iradés of 1908 and 1909 and lists of the civil list properties referred to in these Iradés. Copies of these lists will be sent home after translation. They comprise a list of "ancient Imperial properties" retained by the Sultan in 1909. This makes no mention of any property in Iraq or Palestine thus greatly strengthening our belief that all Civil List property in these countries will be acquired gratuitously by the Iraq and Palestine governments under Article 65.

C. 89071/31 [Nos. 8 and 9]. No. 4 PROOF.

THE SECRETARY OF STATE

to

THE HIGH COMMISSIONERS FOR

1. PALESTINE (No. 604).
2. IRAQ (No. 477).

[Answered by [1:] No. ~~C. 89071/31 [No. 12]~~ 5 [2:] No. ~~C. 98071/32 [No. 4]~~ 6.]

Downing Street, 14th August, 1931.

SIR,

I have the honour to refer to my despatch [No. 170]* [No. 132]* of the 3rd of March, in which I requested that a record might be prepared of the properties claimed and those taken over under Article 60 of the Treaty of Lausanne, and to inform you that the position has been further considered in consultation with the other Departments concerned.

2. The Foreign Office is of opinion that the chances of the heirs being able successfully to carry their case further against His Majesty's Government are exceedingly small, and that, although they may institute proceedings in the local Courts, it is improbable that they would do so, and exceedingly unlikely that in the event of their so doing, they would succeed. In any case should the heirs take action before the local Courts the burden of proof would almost certainly lie with them in the first instance to establish their claim.

Further the Foreign Office is strongly of opinion from the political standpoint, that, if, as is believed, the heirs have no legal case, no question of an *ex gratia* payment to them could be considered.

3. The Foreign Office is consequently of opinion that the record of properties which you have been asked to prepare will not in all probability be necessary.

4. The Treasury Solicitor on the other hand is of opinion that further proceedings in some form are likely to arise at the instigation of the heirs, and that, although it is possible that action may be taken in the local Courts, there is also the possibility that the matter may reach the Hague through a signatory to the Treaty of Lausanne on behalf of any of the heirs who happen to be of the same nationality.

7. The Treasury Solicitor is therefore of opinion that a record of the properties is likely to be required, and that it is preferable to collect this information at leisure rather than under pressure of legal proceedings.

8. Before I decide whether it will be possible to dispense with the collection of this information I shall be glad to receive your observations on the progress in, and the difficulty of, the task, and also to learn whether, as has been suggested, the information when collected will be of use to your Government in the normal course of administration

I have, &c.,

PASSFIELD.

Abdul Hamid—(C.21839/88). 12.

* No. 2.

C. 89071/31 [No. 12]. No. 5 PROOF.

PALESTINE.

THE OFFICER ADMINISTERING THE GOVERNMENT

to

THE SECRETARY OF STATE.

(Received 26th October, 1931.)

(No. 915.)

Jerusalem, 17th October, 1931.

SIR,

I have the honour to refer to Lord Passfield's despatches No. 170 dated the 3rd March, 1931*, and No. 604 dated the 14th August, 1931†, regarding the claims of the heirs of the ex-Sultan Abdul Hamid, and to inform you that it has proved impossible to compile, from local records, a complete list of the properties to be claimed under Article 60 of the Treaty of Lausanne, and of the Waqfs which exist on those properties.

2. A complete list‡ of the Mudawwara properties, extracted from the records of the Lands Department, is enclosed, but it is not possible to indicate which of these were the private property of the Sultan *ab antiquo* as no copies are available of the Iradés relating to those properties. Where no information is given in the columns relating to registration, it has not been possible to trace the registration in the old Turkish Registers, but this cannot be taken as conclusive proof that the properties were never so registered.

The Director of Lands is not aware of any Waqfs on any of the properties shown in the list.

3. The records and Iradés are probably to be found in the Archives of the Daftar Khakané at Constantinople, unless they have been removed to the capital of the Turkish Republic. I am therefore of the opinion that, if an accurate record of the properties is likely to be required, the Turkish Government should be requested to furnish copies of all records of these properties which may exist in the Daftar Khakané, including copies of Iradés and of any orders creating Waqfs on them.

4. If all information regarding the properties formerly held by the ex-Sultan Abdul Hamid were available it would be of use to this Government in contesting claims made by individuals during Land Settlement operations to rights in land, which is considered to be State Domain. I do not, however, consider that its value would be so great as to justify application to the Turkish Government for copies of the records for that purpose alone.

I have, &c.,

M. A. YOUNG,

Officer Administering the Government.

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* No. ~~C. 79071/30 [No. 66]~~. 2 † No. ~~C. 89071/31 [No. 8]~~. 4 ‡ Not printed.

Abdul Hamid—(C.21839/50). 12.

C. 98071/32 [No. 4]. No. 6. PROOF.

IRAQ.

THE HIGH COMMISSIONER

to

THE SECRETARY OF STATE.

(Received 13th June, 1932.)

[*Answered by No. ~~C. 98071/32 [No. 5].~~* 7

(No. 511.)

Baghdad, 1st June, 1932.

SIR,

I have the honour to refer to Lord Passfield's despatch No. 477 dated the 14th of August, 1931*, on the subject of the properties of the late Sultan Abdul Hamid II in 'Iraq and to report that after much correspondence with, and, as a result of extensive enquiries made by, the British Adviser to the Ministry of Finance and the British Inspector-General of the Tapu Department, the information contained in the succeeding paragraphs has been collected with regard to the records of the properties in the possession of the Government of 'Iraq.

2. The Inspector-General of the Tapu Department states that when copies of the official records of the Turkish Government were made in 1927 under the provisions of Article 139 of the Treaty of Lausanne (see correspondence commencing with Mr. Thomas' despatch No. 1268 dated the 27th October, 1924†) photographs were taken of some 250,000 entries from the Turkish Land Registers at Constantinople. At the same time 1,000 sheets of plans were brought to Baghdad each of which contained particulars of one or more of the Sanniyah properties.

In addition to these records a number of old Sanniyah maps of the properties of the late Sultan Abdul Hamid which were left behind, with other papers, by the Ottoman Administration are in the possession of the Government of 'Iraq. It is understood that these maps do not, however, include all the immovable properties of the late Sultan in 'Iraq. Two lists of them have been compiled in the Ministry of Finance and I enclose copies‡ for your information. The list marked "A" is a complete record of all the maps which might possibly include Sanniyah properties and that marked " B " shows those maps upon which it is expressly indicated that they relate to Sanniyah properties. All the maps shown in List " B " are included in List " A ".

3. It is apparent, therefore, that comprehensive records of the properties of the late Sultan Abdul Hamid II are available in this country and there is no doubt that by patient and careful comparison of the plans, register entries and maps experienced officials could compile a useful record of the properties but whether it would be possible to separate them into the categories, and to distinguish them, as desired in Lord Passfield's despatch No. 132 dated the 3rd of March, 1931||, cannot be stated at this juncture.

4. The compilation of such a record would involve the " combing " of each plan and map, the extraction of details of the areas of any Sanniyah properties on them and their comparison with the land registers with a view to tracing the relevant entries therein. The plans are believed to be fairly complete but it is doubtful whether it would be possible to trace the register entry for each individual Sanniyah land because there are a good many gaps in the copies of the registers brought from Constantinople.

5. The Inspector-General of the Tapu Department is of the opinion that given time and additional staff his department could help considerably in sorting out the known Sanniyah properties in 'Iraq and in placing them in the desired categories. He states, however, that it would be a very lengthy task and he considers therefore that it would be necessary for a formal request to be addressed to the Government of 'Iraq if it is to be undertaken.

6. With regard to the question raised in the latter portion of paragraph 8 of the despatch under reply as to the usefulness of the information, when collected, in the normal course of administration. It appears that the existing records have been of no particular use to Government so far in such matters as tax collection but it is quite likely that when land settlement operations develop any information available regarding the Sanniyah properties will prove to be valuable. In so far as it exists in departments it will of course be made use of automatically by the 'Iraqi Government for their own purposes.

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* No. ~~C. 89071/31 [No. 9].~~ 4 † No. C. 49150/24. ‡ Not printed here.

|| No. ~~C. 79071/30 [No. 67]~~ 2. not printed

The British Adviser to the Ministry of Finance is of opinion, however, that this would not necessarily involve the preparation of a comprehensive record such as that proposed, nor justify the dividing of the properties into the categories suggested.

7. To sum up, therefore, it appears that there is sufficient material available in the possession of the Government of 'Iraq to warrant an attempt being made to prepare the record called for in Lord Passfield's despatch No. 132 dated the 3rd of March, 1931, but that its compilation would require considerable labour and take a very long time, and there is no certainty that it could be successfully accomplished. Further, when completed, it would not necessarily be of use to the Government of 'Iraq in the normal course of administration. In these circumstances, I consider that further work should only be undertaken if it is clearly essential to provide against further developments in the matter of the heirs' claims.

I have, &c.,

F. H. HUMPHRYS,

High Commissioner for 'Iraq.

C. 98071/32 [No. 5]. No. 7. PROOF.

IRAQ.

THE SECRETARY OF STATE

to

THE HIGH COMMISSIONER.

(No. 349.)

Downing Street, 1st July, 1932.

SIR,

I have the honour to acknowledge the receipt of your despatch No. 511 of the 1st of June* regarding the properties of the late Sultan Abdul Hamid II in Iraq.

I agree with the view expressed in the last paragraph of your despatch that no further action need be taken in this matter unless circumstances should arise which render this necessary.

I have, &c.,

P. CUNLIFFE-LISTER.

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* No. ~~C. 98071/32 [No. 4]~~. 6

Abdul Hamid—(C.21839/52). 12.

38171/34 [No. 1]. No. 8. PROOF.

FOREIGN OFFICE

to

COLONIAL OFFICE.

[*Answered by No.* ~~38171/34 [No. 2].~~] 10.

Foreign Office, S.W.1, 16th June, 1934.

SIR,

With reference to your letter of the 2nd March, 1931* and to connected correspondence, I am directed by Secretary Sir John Simon to transmit to you, to be laid before the Secretary of State for the Colonies, the accompanying copy of a letter from Messrs. Bischoff, Coxe, Bischoff and Thompson, on behalf of the Consolidated Eastern Corporation Limited, in regard to the claim of the heirs of the late Sultan Abdul Hamid II of Turkey for the restoration of various properties situated in territories detached from Turkey under the Lausanne Peace Settlement of 1923.

2. The Secretary of State is advised that unless the heirs or their agents pursue their claim before the local Iraqi, Palestine or Cypriot courts there is no action which they can effectively take. Their claim could not be brought before an international court unless they, or such of them as are still Turkish nationals, could succeed in getting the Turkish Government to take it up on their behalf. This is admitted by Monsieur Politis in paragraph 50 of the Opinion which is enclosed in the letter from the legal agents of the claimants. Even then, however, the Turkish Government could not compel His Majesty's Government to go to arbitration in the matter, since Turkey has not signed the Optional Clause, and in any case, as the claim arose before the ratification of the Optional Clause by His Majesty's Government, it is covered by the reservations attached to that ratification. It would therefore appear that unless the Turkish Government followed the precedent set in the case of the Finnish ships of taking the matter before the Council of the League of Nations—a course to which the Turkish Government would in the circumstances probably be very reluctant to resort—there would be no action which they could take in the matter.

3. It will be observed that Monsieur Politis bases a good deal of his case (*vide* paragraphs 12, 13 and 32 of his Opinion) on the proceedings at the Peace Conference of Lausanne leading up to the adoption of the definitive wording of Article 60 of the Treaty. No detailed minutes of the proceedings of the second part of the Lausanne Conference were made by His Majesty's Government, but a careful search in the archives of the period has thrown no light on what is the kernel of the whole matter, namely, what the negotiators actually intended by the phrase " subrogés à l'Empire ottoman " in Article 60 of the Treaty of Lausanne. In his Opinion Monsieur Politis states one view of this intention, while on the other hand the view of His Majesty's Government was stated in their " contre réplique " before the Anglo-Turkish Mixed Arbitral Tribunal in Constantinople, and the Tribunal in its judgment endorsed that view. Sir John Simon, as at present advised, is not prepared to say that the case of His Majesty's Government on this point is unassailable. It is however a strong one, and as His Majesty's Government cannot apparently be forced into arbitration on the matter, he suggests that they should maintain their point of view.

4. It is to be noted that neither Messrs. Bischoff, Coxe, Bischoff and Thompson nor Monsieur Politis definitely state that there *are* private properties *not* included in the Iradés mentioned in Article 60 of the Treaty of Lausanne or administered by the Turkish Civil List for the benefit of a public service. If such properties did in fact exist, they were not transferred by Article 60 of the Treaty of Lausanne, and the heirs would presumably have a good claim in respect of them. This claim would however have to be enforced by proceedings in the local courts, and it, too, could only be brought up *internationally* if the Turkish Government, or at any rate the Government (other than a British Government) of the country to which the heirs do belong, were willing to take it up on the ground that the decision of those courts constituted a breach of international law or a denial of justice. The Secretary of State is advised that a government other than the Turkish Government might be able to act in regard to this particular class of property because strictly speaking the claim would not *depend* on Article 60 of the Treaty of Lausanne. The position would simply be that the heirs were formerly the owners and that neither the Lausanne Settlement nor any other instrument had deprived them of their ownership. If they were actually so deprived the heirs would be obliged to exhaust their legal remedies locally and the only basis for an international

* No. ~~C. 79071/30 [No. 65].~~ 1.

claim would be that indicated above. This claim could however probably be made by any foreign government of which the heirs were nationals and not merely by the Turkish Government alone.

5. In the light of the foregoing considerations, the Secretary of State would propose that, subject to the concurrence of the Secretary of State for the Colonies and of the Lords Commissioners of His Majesty's Treasury, a brief but courteous reply should be returned to Messrs. Bischoff, Coxe, Bischoff and Thompson to the effect that the able Opinion of Monsieur Politis has been read with great interest, but that His Majesty's Government in the United Kingdom regret that they are unable to depart from the views already expressed by them in this matter as stated in their arguments, written and oral, before the Anglo-Turkish Mixed Arbitral Tribunal. Sir John Simon considers that at the present stage nothing need be said in regard to arbitration since, although it is mentioned by Monsieur Politis in his Opinion, the solicitors do not specifically ask for an answer on this point.

6. The Secretary of State presumes that Messrs. Bischoff, Coxe, Bischoff and Thompson have addressed themselves to his department because the matter at issue is one which arises under the Treaty of Lausanne. As however the claim is now apparently one by a British company against His Majesty's Government in the United Kingdom, he would suggest that when the exact nature of the reply to be returned has been agreed upon, it should be sent to Messrs. Bischoff, Coxe, Bischoff and Thompson by the Treasury Solicitor, to whom a copy of the correspondence, together with a copy of Monsieur Politis' Opinion, is being sent direct.

I am, &c.,

C. F. A. WARNER.

Enclosure in No.

4, Great Winchester Street, E.C.2, 9th May, 1934.

DEAR SIR,

The Secretary of State is possibly aware that from time to time during the last few years, in fact ever since the signing of the Treaty of Lausanne, efforts have been made by the heirs of the late Sultan of Turkey, Abdul-Hamid II, and certain groups representing their interests, to establish their right to recover from the Allied Powers various properties and possessions, which formed part of the private estate of the Sultan, and which could not therefore be included in any cession to the Allied Powers as being part of the property or possessions of the Ottoman Empire.

The Secretary of State will appreciate that before any concrete claim could be formulated an enormous amount of preparatory work was involved, and it is perhaps true to say that the earlier groups which were formed to represent the heirs had neither the means nor the capacity to bring the preliminary stages to a final and successful conclusion.

In the early part of 1932, however, a company was incorporated in Canada by certain responsible persons under the name of Consolidated Eastern Corporation Limited, with an authorized capital of 5,000,000 shares of $1 each and with $2,500,000 debentures, and in due course a majority of the heirs made over to this company all their share of the properties, rights and interests constituting the succession of the Sultan outside the confines of the Turkish Republic, in exchange for shares and debentures of the company.

The claim against His Majesty's Government relates in particular to Article 60 of the Treaty of Lausanne, and the construction to be placed upon that Article, but it is unnecessary, and in fact it would be presumptuous for us to attempt to elaborate the arguments in support of the claim, since our clients, Consolidated Eastern Corporation Limited, have had the advantage of obtaining the Opinion of M. Nicolas Politis, whose reputation as an international lawyer is unsurpassed, and with whom, no doubt, the Secretary of State is personally acquainted. We have pleasure in forwarding with this letter M. Politis' Opinion* with a certified translation*, and 3 copies for reference, and we can supply further copies if required.

The claim is briefly for the restoration to the heirs of the late Sultan Abdul-Hamid II of their properties including those properties in regard to which Great Britain was subrogated to the Ottoman Empire under Article 60 of the Treaty of Lausanne.

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* Not reprinted.

At the moment we do not think that it is necessary to specify in detail the properties involved, but we may say that they are situate in the districts of Jerusalem, Mosul, Bagdad and Basra and in the Island of Cyprus, and that we are in a position to furnish, as and when required, a certified list of the properties under the seal of the National Domains Section of the Turkish Ministry of Finance.

We shall also be happy to supply the Secretary of State with any further information which he may require, and need hardly say that we and our clients are entirely at his disposal in case a personal interview should be considered desirable.

We shall be greatly obliged to receive the views of the Secretary of State on this matter at his convenience.

We are, &c.,

BISCHOFF, COXE and Co.

The Under Secretary of State for Foreign Affairs,
Foreign Office,
Whitehall, S.W.

38171/34 [No. 5]. No. 9. PROOF.

MR. GEDDES H. WINSTON

to

THE SECRETARY OF STATE.

(Received 10th July, 1934.)

27th June, 1934.

SIR,

I am writing respectfully to bring to your attention important developments with respect to the land, oil concessions and mines belonging to the late Sultan Abdul Hamid II, of Turkey, which property and rights descended to his heirs upon his death and were by said heirs transferred by due and formal deeds and documents of transfer to the following corporations:

Abdul Hamid Landed Estates, Ltd.,
Abdul Hamid Mines, Ltd., and
Abdul Hamid Oil Concessions, Ltd.

The three above named Companies are incorporated and existing under the Companies Act of Great Britain.

In connexion with and as a part of the transaction there is organized and existing under the Companies Acts of Great Britain, the Abdul Hamid British Trust, Ltd.

The foundation Companies of this enterprise were and are:

The Ottoman Imperial Estates, Incorporated, and the
Sultan Abdul Hamid Estates, Incorporated.

These two last named corporations were organized under the laws of the State of Virginia, the former with an issued capital stock of $5,000,000, and the latter with an issued capital stock of $150,000,000.

The Ottoman Imperial Estates owns, registered in its name, the whole of the share capital of the Abdul Hamid British Trust, Ltd.; eighty-four per cent of the share capital of the Abdul Hamid Oil Concessions, Ltd.; seventy-two per cent of the share capital of the Abdul Hamid Mines, Ltd.; The Sultan Hamid Estates, Incorporated, owns the whole of the share capital of the Abdul Hamid Landed Estates, Ltd.. The four British Companies are those first hereinabove referred to.

On 6th June, 1934, I was appointed and qualified as Receiver, by the Richmond Circuit Court of Virginia, a court of competent jurisdiction, of The Ottoman Imperial Estates, Incorporated, and The Sultan Abdul Hamid Estates, Incorporated, hereinabove referred to, and which Corporations, as hereinabove set out, own the share capital and interests hereinabove mentioned, in the four British Companies above referred to.

I am informed that the Consolidated Eastern Corporation, Ltd., organized under the laws of Canada, and under the aegis of the Bank of Montreal and the Royal Trust Company of Canada, is attempting and purporting to deal with His Majesty's Government, and the various other Governments interested in this matter. Under the authority conferred upon me by the competent Court of the Commonwealth of Virginia, above referred to, I desire respectfully to intimate to His Majesty's Government, that no one except myself, as Receiver, has any legal right or authority to in any way negotiate with His Majesty's Government in any manner with respect to any of the rights, interests, properties, concessions, lands or mines belonging to the late Sultan Abdul Hamid, and wherever situated. Neither that Corporation, nor any other, nor the heirs themselves, either personally or through any attorney or agent or otherwise, have any legal right to dispose of or deal with any part of the property or interests in the estate of the late Sultan Abdul Hamid Han II.

On behalf of the Commonwealth of Virginia, which is a creditor of these Corporations, in the amount of $140,000, and on behalf of all other creditors and stockholders of the above named Virginia Corporations, I respectfully represent these facts to His Majesty's Government with the expectation and confident faith that they will be given full credence in this matter, I am sir,

Yours, &c.,

GEDDES H. WINSTON,
Receiver, Ottoman Imperial Estates, Inc.,
The Sultan Abdul Hamid Estates, Inc.

38171/34 [No. 2]. No. 10. PROOF.

COLONIAL OFFICE

to

FOREIGN OFFICE.

Downing Street, 20th July, 1934.

SIR,

I am directed by Secretary Sir Philip Cunliffe-Lister to acknowledge receipt of your letter of the 16th June* regarding the claim of the heirs of the late Sultan Abdul Hamid II of Turkey, and to request you to inform Secretary Sir John Simon that he agrees that a reply on the lines suggested in paragraph 5 of your letter should be returned to Messrs. Bischoff, Coxe, Bischoff and Thompson. Sir Philip Cunliffe-Lister also agrees that the reply should be sent by the Treasury Solicitor.

2. It is observed from the Solicitors' letter that they can supply further copies of M. Politis' Opinion, and I am to request that, unless Sir John Simon sees any objection, two further copies of the Opinion may be obtained and forwarded to this Department for transmission to Palestine and Cyprus.

3. A copy of this letter is being sent to the Treasury Solicitor.

I am, &c.,

A. J. DAWE.

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* No. ~~38171/34 [No. 1]~~. 8

Abdul Hamid—(C.21839/54). 12.

38171/34 [No. 3]. No. 11. PROOF.

MR. A. J. DAWE (COLONIAL OFFICE)

to

MR. G. W. RENDEL (FOREIGN OFFICE).

DEAR RENDEL, Downing Street, 20th July, 1934.

We are writing officially* to the Foreign Office to-day about the claims of the heirs of the late Sultan Abdul Hamid, concurring in the proposals contained in your letter of the 16th June†.

There is one point in connexion with M. Politis' Opinion which you no doubt noticed. As far as I could see on a somewhat cursory reading of his Opinion he appears to make no distinction between the properties claimed in Cyprus and those elsewhere, but to lump them all together under the general heading of properties situated in *territories detached from Turkey under the Treaty of Lausanne*. As you are aware, the position of Cyprus in regard to the Lausanne Treaty was very carefully considered many years ago: and we have always maintained that Cyprus is not one of the territories detached from the Ottoman Empire by the Treaty. Article 20 of the Treaty merely registers Turkey's acceptance of the annexation which took place in 1914.

The point is, of course, of no immediate importance in view of the terms of the reply which you propose to send to the Solicitors.

Yours, &c.,

A. J. DAWE.

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* No. ~~38171/34 [No. 2]~~. 10 † No. ~~38171/34 [No. 1]~~. 8

Abdul Hamid—(C.21839/55). 12.

38171/34 [No. 6]. No. 12. PROOF.

COLONIAL OFFICE

to

TREASURY SOLICITOR.

SIR, Downing Street, 26th July, 1934.

With reference to the letter from this Department of the 21st July* regarding the claims of the heirs of the late Sultan Abdul Hamid II of Turkey, I am directed by Secretary Sir Philip Cunliffe-Lister to transmit to you, for such action as you may consider necessary, a copy of a letter† on this subject from Mr. Geddes H. Winston The letter has not been acknowledged.

2. A copy of this letter, with the enclosure, is being sent to the Foreign Office.

I am, &c.,

H. F. DOWNIE.

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* No. 38171/34 [No. 4], not printed. † No. ~~38171/34 [No. 5]~~. 9

Abdul Hamid—(C.21839/57). 12.

38171/34 [No. 11]. No. 13. PROOF.

TREASURY SOLICITOR

to

COLONIAL OFFICE.

Storey's Gate, S.W.1, 17th August, 1934.

The Treasury Solicitor presents his compliments to the Under-Secretary of State for the Colonies, and with reference to Colonial Office note of the 14th instant* has pleasure in sending herewith a copy of the reply which he has now despatched to Mr. Geddes H. Winston in the matter of the claim of the heirs of the Ex-Sultan Abdul Hamid II of Turkey. The Treasury Solicitor would add that the draft reply was concurred in by the Foreign Office, to which Department a copy of the letter as despatched is also being sent.

Enclosure in No. 13.

DEAR SIR, Storey's Gate, S.W.1, 17th August, 1934.

I have before me your letter of the 27th June last† addressed to the Right Honourable the Secretary of State for the Colonies, in respect of claims which have been made in the names of the heirs of the late Sultan Abdul Hamid II of Turkey to property in certain territories formerly part of the Turkish Empire.

I note that as the Receiver of the Ottoman Imperial Estates, Incorporated, and the Sultan Abdul Hamid Estates, Incorporated, being companies organized under the laws of the State of Virginia, you deny that the Canadian company entitled the Consolidated Eastern Corporation, Limited, has any legal right or authority to negotiate in any manner with respect to the rights, interests, properties, concessions, lands or mines belonging to the late Sultan Abdul Hamid II, wherever situate, and maintain that the only such right or authority is vested in you.

You are, I assume, aware that claims on behalf of the heirs in question were made before the various Mixed Arbitral Tribunals, set up pursuant to the Treaty of Lausanne, and that such claims were dismissed. I would add for your information that claims on behalf of the heirs have on various occasions been brought before His Majesty's Government in the United Kingdom, and that after careful consideration, such claims have been found to possess no sufficient (or indeed any) basis in law or equity.

Those acting on behalf of the Consolidated Eastern Corporation, Limited, have recently been informed that His Majesty's Government see no reason to modify in any way the attitude hitherto adopted by them in the matter.

I am, &c.,

A. W. BROWN.

Geddes H. Winston, Esq.,
Counsellor-at-law,
Travellers Building,
Richmond,
Virginia, U.S.A.

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* No. 38171/34 [No. 10]. Not printed † No. ~~38171/34 [No. 5]~~. 9

38171/34 [No. 12]. No. 14. PROOF.

TREASURY SOLICITOR

to

THE SECRETARY OF STATE.

[*Answered by No. 38171/34 [No. 13] not printed.*]

With reference to his memorandum of the 17th instant* and to previous correspondence in the matter of the claims of the heirs of the Ex-Sultan Abdul Hamid II, the Treasury Solicitor sends herewith for the information of the Secretary of State for the Colonies a copy of a note of interview with Mr. Inchbald, of Messrs. Bischoff, Coxe & Co., on the 21st instant.

Storey's Gate, S.W.1,
22nd August, 1934.

Enclosure in No. 14.

CLAIM OF THE HEIRS OF THE EX-SULTAN ABDUL HAMID.

Note of Interview.

Mr. Inchbald, of Messrs. Bischoff, Coxe & Co., called to-day for the purpose of ascertaining more exactly the position of His Majesty's Government in regard to this claim. He said that whilst the present claimants were in a position to represent without exception all those having rights in the matter (other claimants who may have appeared in the past on behalf of a group or groups of heirs no longer having any status) he and those whom he represented were not fully cognisant of previous negotiations with His Majesty's Government, so that the Treasury Solicitor's letter to his firm of the 4th July, when speaking of the maintenance of the attitude hitherto adopted, was not very explicit. He explained that the present claimant company was a substantial concern, backed in effect by the Bank of Montreal and a Mr. Stewart, Chairman of the Associated Portland Cement Company. A great deal of time and money had been expended in necessary investigations and negotiations to put the matter in train, and they had received various strong opinions in support of the merits of the claim. He added that the Turkish Foreign Minister and the Turkish Ambassador in London had both expressed very favourable opinions to the claim, and had promised to do their best to support it; instructions from Ankara to the Ambassador in London to make representations on the matter to the Foreign Office are expected to arrive shortly.

Similar claims are being presented against the French, Italian and Greek Governments, and Mr. Inchbald understood that negotiations with those Governments, particularly with the Greek Government, had made considerable progress. Mr. Inchbald suggested that His Majesty's Government would not care alone to refuse to enter on negotiations which the French and Italian authorities recognized as proper, and he hoped that arrangements might be made for a discussion between some influential representative of His Majesty's Government and M. Politis and himself at which the whole matter might be discussed with a view to reaching a settlement. Whilst his clients were convinced of the justice of their claims, they recognized that to enforce it by adverse proceedings would be a matter involving difficulty, and also considerable expense and delay; they thought that a fair settlement would be possible by negotiation, although Mr. Inchbald had no idea of the minimum sum which his clients would expect to receive under any such arrangement.

From the general remarks made by Mr. Inchbald on the claim, it would seem that the case is being largely based on the suggestion that the Iradés of 1908 and 1909 were invalid, and that the decisive factor in Turkish law in regard to ownership of land and other real rights is the entry in the cadastral register; all such entries up to the critical date are said to have remained in the name of the ex-Sultan.

I explained to Mr. Inchbald that, as I understood it, the attitude of His Majesty's Government in Great Britain was that those represented by him had no claim either morally or legally against that Government, but that if his clients were advised that under the terms of the Treaty of Lausanne or otherwise, they were entitled to lands and other real interests in any of the detached territories, it was for them to go before the appropriate local Court or Courts and only if they failed to secure justice in such Court would the possibility arise to deal with the claim in another sphere. In this

* No. ~~38171/34 [No. 11]~~. 13.

connexion, he referred to the attitude of the Iraqi Government, which he said had by legislation divested the heirs of any rights and had forbidden their Courts to entertain proceedings in respect of such rights. I told Mr. Inchbald that, in the circumstances as they now existed, I could not in any event see any ground for liability on the part of His Majesty's Government in Great Britain, and that in my view there would not be any advantage at present in a discussion with M. Politis such as his clients suggested. I could not say what the attitude of the appropriate authorities would be to representations made to them by the Turkish Government, or (as he had also suggested) by Petition of the Caliph to His Majesty; personally I could only repeat that his clients had no good claim against the Government, and that therefore there could be no question of a settlement by discussion or otherwise, and I should oppose by all proper means any action which they might take for the purpose of pressing the matter.

A. W. BROWN.

Treasury Solicitor's Department,
21st August, 1934.

38171/34 [No. 14]. No. 15. PROOF.

TREASURY SOLICITOR

to

COLONIAL OFFICE.

[*Answered by No.* ~~38171/34 [No. 16].~~] 17.

The Treasury Solicitor presents his compliments to the Under-Secretary of State for the Colonies and as requested in his note of the 7th instant* sends herewith a copy of his letter of the 4th July last to Messrs. Bischoff, Coxe, Bischoff & Thompson. It is regretted that no copies of M. Politis' Opinion†, which is a very lengthy printed document, are available.

Storey's Gate, S.W.1.
10th September, 1934.

Enclosure in No. 15 ..

DEAR SIRS, Storey's Gate, S.W.1, 4th July, 1934.

In reply to your letter to the Under-Secretary of State for Foreign Affairs dated 9th May 1934‡ relative to the claims made against His Majesty's Government of the United Kingdom by the heirs of the Ex-Sultan Abdul Hamid II, I have to inform you that whilst the Opinion of Monsieur Nicolas Politis (of which a copy was enclosed with your letter) has been read with interest His Majesty's Government see no reason to modify in any way the attitude hitherto adopted by them in the matter.

I am, &c.,
A. W. BROWN.

Messrs. Bischoff, Coxe & Co.,
Solicitors,
4, Great Winchester Street, E.C.2.

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* No. 38174/34 [No. 13] not printed. † Enclosure in No. 38171/34 [No. 1] not reprinted.
‡ Enclosure 1 in No. ~~38171/34 [No. 1]~~. 8

Abdul Hamid—(C.21839/60). 12.

38171/34 [No. 15]. No. 16. PROOF.

PALESTINE.

THE OFFICER ADMINISTERING THE GOVERNMENT

to

THE SECRETARY OF STATE.

(Received 22nd October, 1934.)

(No. 869.)

Jerusalem, 13th October, 1934.

SIR,

I have the honour to refer to the correspondence terminating with Sir Mark (then Mr.) Young's despatch No. 915 of the 17th October, 1931*, regarding the claims of the heirs of the ex-Sultan Abdul Hamid in respect of lands in Palestine, and to inform you that a petition, of which a copy is attached, has been filed in the District Court of Jaffa in this connexion by Dr. A. Weinshall, a local advocate, on behalf of His Highness Prince Mohamed Selim, son of the ex-Sultan.

2. I propose subject to your advice to grant my fiat upon Dr. Weinshall's petition, in view of the provisions of Section 3(1) (*c*) of the Crown Actions Ordinance, 1926.

I have, &c.,

J. HATHORN HALL,

Officer Administering the Government.

Enclosure in No. 16.

In the Land Court,

Jaffa. Haifa, the 15th of July, 1934.

PLAINTIFF: His Highness Prince Mohamed Selim son of the late Sultan Abdul Hamid II of Turkey, represented by Dr. A. Weinshall, advocate, Haifa.

DEFENDANT: Attorney-General, acting on behalf of the Government of Palestine, Jerusalem.

1. The late Sultan Abdul Hamid II of Turkey who died on the 10th of February, 1918, left him surviving several heirs, mentioned in the attached certificate† of succession (Exhibit I), among them the Plaintiff, who is his eldest son and is entitled to 378 shares out of 4,320 shares in the estate of the said late Sultan.

2. There are several properties and lands situated in Palestine forming part of the estate of the said late Sultan, among them the lands and properties situated in the village of Moharraka, Gaza Sub-District, containing an area of about 4,580 donums and known as Jiftlik of the late Sultan Abdul Hamid.

3. The ownership of the said late Sultan in respect of the said lands and properties is contested by the Government of Palestine, which claims that the said lands and properties are a state domain.

4. It is submitted that the said claim by the Government of Palestine is illegal and unfounded, and that the said lands and properties have always been since their acquisition by the late Sultan Abdul Hamid II of Turkey and still are the private property of the said late Sultan and form a part of his estate.

5. It is prayed therefore, that a judgment be given:

(*a*) declaring that the said lands and properties form a part of the estate of the late Sultan Abdul Hamid II of Turkey,

(*b*) declaring that the Plaintiff is entitled to 378 shares out of 4,320 shares in the said lands and properties.

(*c*) Ordering the Defendant to abstain from any interference with the said lands and properties and to restore to the Plaintiff his shares therein.

(*d*) Ordering the Land Registry of Gaza to enter the name of the Plaintiff as owner in respect of the said shares in the said lands and properties.

(*e*) Condemning the Government to pay the costs of this action including the advocates fees.

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* No. ~~C. 89071/31 [No. 12]~~. 5 † Not printed.

6. It is prayed that in accordance with Section 4 of the Crown Actions Ordinance, 1926, the present statement of claim be transmitted to the Chief Secretary of the Government of Palestine in order to be laid before H. E. the High Commissioner for Palestine for the purpose of obtaining His Excellency's written consent authorising the Plaintiff to bring the present action.

A. WEINSHALL,

Attorney for Prince Mohamed Selim.

38171/34 [Nos. 16 and 17]. No. 17. PROOF.

COLONIAL OFFICE

to

1. TREASURY SOLICITOR.
2. FOREIGN OFFICE.

SIR, Downing Street, 14th November, 1934.

I am directed by Secretary Sir Philip Cunliffe-Lister to refer to the correspondence ending with [*To 1*: your note of the 10th September,] [*To 2*: the letter from this Department of the 30th July,] regarding the claims made against His Majesty's Government by the heirs of the ex-Sultan Abdul Hamid II, and to transmit to you [*To 2*: to be laid before Secretary Sir John Simon] a copy of a despatch* from the Officer Administering the Government of Palestine enclosing a petition which has been filed in the District Court of Jaffa on behalf of His Highness Prince Mohamed Selim, a son of the ex-Sultan. Copies of the Palestine Crown Actions Ordinance No. 30 of 1926†, and of the Amending Ordinance No. 10 of 1931†, are also enclosed.

2. Sir Philip Cunliffe-Lister will be obliged if he can be furnished at an early date with [*To 1*: your] [*To 2*: Sir John Simon's] views on the advice which should be tendered to Mr. Hall in this matter, and with any observations which [*To 1*: you] [*To 2*: he] may desire to offer on the petition generally.

3. I am to take this opportunity to enclose a copy of a despatch from the Officer Administering the Government of Palestine dated 17th October, 1931‡, together with an extract from the list of Mudawwara properties which accompanied that despatch. It is assumed that the lands and properties in respect of which a petition has now been filed are those which appear as Item 31 on the enclosed list. In this connexion attention is invited to [*To 1*: Dr. Brown's letter of the 9th December, 1932, to Mr. Williams] [*To 2*: Mr. Williams' letter of the 15th December, 1932, to Mr. Rendel] and to previous correspondence.

4. A similar letter is being addressed to the [*To 1*: Foreign Office] [*To 2*: Treasury Solicitor].

I am, &c.,

O. G. R. WILLIAMS.

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* No. ~~38171/34 [No. 15].~~ 16 † Not reprinted. ‡ No. ~~C. 89071/31 [No. 12]~~. 5

Abdul Hamid—(C.21839/61). 12.

38171/34 [No. 18]. No. 18. PROOF.

THE SECRETARY OF STATE FOR FOREIGN AFFAIRS

to

HIS MAJESTY'S REPRESENTATIVE, ANGORA.

(Copy received in Colonial Office, 1st December, 1934.)

(No. 473.)

SIR, Foreign Office, S.W.1, 28th November, 1934.

With reference to my despatch No. 247 of the 19th June, I transmit to Your Excellency the accompanying copy of a memorandum left at the Foreign Office by the Counsellor of the Turkish Embassy on the 9th November, stating that the Embassy have been instructed by the Turkish Government to support the claim of those heirs of the late Sultan Abdul Hamid who are Turkish citizens for the restoration of various properties situated in the territories detached from Turkey which came under British control after the Lausanne Peace Settlement of 1923. In making this communication, Sedat Zeki Bey gave it to be understood that the Turkish heirs whose claim his Government wish to support are the widows and female heirs of the late Sultan who, according to him, had retained their Turkish nationality. He refrained however from giving any indication of the real feelings of the Turkish Government in this matter, and merely said that he had fulfilled his instructions in leaving the memorandum.

2. The statement in the second paragraph of the memorandum to the effect that the claim of the heirs who are Turkish citizens has been submitted to this Department by their solicitors would appear to be based on a misapprehension, since the only claim regarding the properties of the late Sultan Abdul Hamid laid before His Majesty's Government in recent years was that which formed the subject of my despatch under reference. That claim was made on behalf of the Consolidated Eastern Corporation Limited, a company incorporated in Canada, which claims to have received the transfer from the majority of the heirs of the late Sultan of their rights in the properties in question. As you are aware from my despatch No. 279 of the 12th July, the Company's solicitors have been informed that His Majesty's Government see no reason to modify in any way the attitude which they have hitherto adopted in this matter.

3. I am advised that, notwithstanding the lack of any foundation for the claims, it is most desirable that in present circumstances His Majesty's Government should not be drawn into any discussion of their merits, and that they should, if possible, rely exclusively on the various technical obstacles in the way of the claims being taken up internationally. The first of these obstacles arises from the fact that most, if not all, of the heirs of the late Sultan Abdul Hamid have lost their Turkish nationality. The exact position as regards this point is not altogether clear, but the view expressed by Sedat Zeki Bey that the widows and female heirs have retained their Turkish nationality is not borne out by a reference to the relevant provisions of Turkish Law No. 431 of the 3rd March, 1924, which appears to have deprived all members, whether male or female, of the former Imperial family of their Turkish nationality. In any case it seems unlikely that more than a very few of the heirs have retained their Turkish nationality, and, even assuming that a few of the heirs are in that position, it is not clear whether they have retained their Turkish nationality throughout, or whether they lost it under the law of 1924, but have in some way since regained it. If the latter were the case, they would be in no better position than the other heirs, since it is necessary under international law that a claim shall be presented, and presented only, by a State whose nationals the individual claimants have been, not only at the time when the wrong was done, but also at the time when the claim was presented, and continuously between these two dates. International law also requires continuous ownership of claims, and such of the heirs as may still be Turkish citizens may be among those who have transferred their rights to the Consolidated Eastern Corporation Limited.

4. But even if there exist heirs in such a position that, according to the above principles, the Turkish Government could properly lodge a claim on their behalf, there remains the fact that the Turkish Government have no means of compelling His Majesty's Government to accept arbitration on such a claim. Turkey is not a party to the Optional Clause, and in any case this particular dispute would probably be barred under the reservations attached by His Majesty's Government to their own accession to that clause. Thus, short of attempting to take the matter before the Council of the League of Nations, which it seems unlikely that the Turkish Government would be ready to do, there is in the last resort no action in the international sphere to which they could have recourse.

5. A third obstacle is presented by the formation of the Canadian Eastern Corporation Limited. It is not absolutely clear whether this company is merely acting as agent for a majority of the heirs, the claim still being vested in the heirs as legal owners, or whether, as stated by the company's solicitors, the heirs have in fact made over their claims to the company, i.e. have parted with the legal ownership. On the whole, however, the latter seems the more likely to be the case, and, in so far as the heirs have done this, no international claim on their behalf is possible, since the rights of such heirs are now vested in a British company, whose sole remedies are by means of legal action in the English courts or in those of other appropriate British territories. It would of course be open to the Turkish Government to take up the claims of any heirs who both (*a*) have not assigned their claims to the Canadian company, and also (*b*) still are, and continuously have been, Turkish nationals throughout the existence of the claim, but, as has been explained in the preceding paragraph, there is little effective action which the Turkish Government could in fact take.

6. In these circumstances, it would seem feasible, should it eventually be thought desirable to return a reply to the Turkish Embassy's memorandum, to take the line that, according to the information at the disposal of His Majesty's Government, all the heirs of the late Sultan Abdul Hamid have lost their Turkish nationality, and that heirs of the late Sultan Abdul Hamid have lost their Turkish nationality, and that His Majesty's Government are therefore unable to appreciate the *locus standi* of the Turkish Government in this matter. It might be indicated that, even if the information of His Majesty's Government were incorrect, the case is one in which they would refuse to accept a reference to arbitration, and, finally, that, as most of the claims are apparently now vested in a Canadian company, the matter is, at any rate as regards the larger part of it, one purely between His Majesty's Government and a British entity, which cannot therefore be made the subject of international action.

7. It seems probable however that a reply to the Turkish Ambassador on these lines would be likely not only to give rise to some attempt at a reasoned answer on the part of the Turkish Government, and thus to prolonged and unprofitable argument, but to put the Turkish Government and the heirs on their guard against specific weaknesses in their position, and thus possibly enable them to return to the attack in a more guarded and perhaps more serious manner. Moreover, there is as yet no indication that the present Turkish Government, whose plea on behalf of members of the ex-Imperial family, whom they themselves expelled from Turkey, is certainly somewhat paradoxical, intend to pursue the claim seriously; and it may be that having given their formal support to the claim, they will now be prepared to let it drop so far as they themselves are concerned. If so, it would appear best to refrain from replying to the Turkish Embassy and so from giving the Turkish Government an opening for further correspondence. If, on the other hand, the Turkish Government wish to give further support to the claim of the heirs, it is clearly desirable that they should be brought openly to state their case without being in possession in advance of the arguments with which His Majesty's Government would endeavour to refute it. I have therefore, after careful consideration, decided to leave the Turkish Embassy's memorandum unanswered.

8. If you have any information tending to show whether there are in fact any heirs who still fulfil both or either of the conditions (*a*) and (*b*) mentioned at the end of paragraph 5 of this despatch, I shall be glad to be furnished with it in due course.

I am, &c.,

(For the Secretary of State)

G. W. RENDEL.

Enclosure in No. 18

L'Ambassade de Turquie est chargée par son Gouvernement d'appuyer auprès du Gouvernement de Sa Majesté la réclamation des héritiers sujets turcs de feu Abdul Hamit concernant la restitution des biens et droits ayant appartenu à celui-ci et se trouvant dans les territoires qui, à la suite du Traité de Lausanne, ont été placés sous l'autorité du Gouvernement de Sa Majesté Britannique.

Le Gouvernement de la République est persuadé que le Gouvernement de Sa Majesté voudra bien reconnaitre le bien fondé de cette réclamation que l'Ambassade est informée avoir été déjà soumise au Foreign Office par les représentants légaux des susdits héritiers sujets turcs.

le 9 novembre 1934.

38171/34 [No. 19]. No. 19 PROOF.

TREASURY SOLICITOR

to

COLONIAL OFFICE.

[*Answered by No. ~~38171/34 No. 21~~*.] 24.

SIR, 3rd December, 1934.

With reference to Mr. Williams' letter of the 14th ultimo* regarding the claims made against His Majesty's Government by the heirs of the Ex-Sultan Abdul Hamid II, I have to say, for the information of the Secretary of State, that in my view, having regard to the attitude hitherto adopted in the matter, it is desirable that the Petition which has been filed in the District Court of Jaffa on behalf of His Highness Prince Mohamed Selim under the Palestine Crown Actions Ordinances of 1926 and 1931 should be allowed to proceed.

As it may be thought of assistance to the authorities in Palestine who may have to deal with the matter to have some information in regard to the arguments affecting the claims of the heirs, which have been made use of in the proceedings before the Anglo-Turkish Mixed Arbitral Tribunal at Constantinople and subsequently, I have with the assistance of Mr. John Foster, who appeared on behalf of His Majesty's Government before that Tribunal, prepared a memorandum, of which four copies are sent herewith, dealing with those arguments. Although it may not be material at the present stage to know of the various assignments by the heirs of the benefit of their claims to American, English and Canadian companies, of which His Majesty's Government have received notice, they will no doubt be brought to the attention of the Palestinian authorities, as the course of events may at some later stage of the proceedings render the existence of these assignments a matter of some importance.

A copy of this letter and of the enclosure thereto, is being forwarded to the Foreign Office and also to the Treasury.

I am, &c.,

A. W. BROWN.

Enclosure in No. 19

MEMORANDUM.

On the 15th July, 1934, a petition was filed in the land Court, Jaffa, on behalf of Mohamed Selim, son of the ex-Sultan Abdul Hamid, claiming 4,850 dunums in the village of Moharraka, Gaza sub-district. The claim alleges that this property was part of the private property of the late Sultan and forms a part of his estate, in which the claimant is entitled to 378 shares out of 4,320 shares. According to the claim, the Government of Palestine alleges that the property in dispute is a state domain.

The object of this memorandum is to set out various arguments, arising out of the effect of the Treaty of Peace with Turkey signed at Lausanne on the 24th July, 1923, on this claim, which might be of use to the Palestine Government in dealing with this petition. This memorandum is not concerned with questions of Turkish or Palestinian land law, such as the proof of title by the claimant or the conclusiveness of entries in the cadastre or the effect of lapse of time or of Palestinian legislation on the question. It is moreover assumed that the Treaty of Lausanne is part of the law of Palestine, and that arguments for or against the claim can validly be founded on the Treaty.

The claim that has now been put forward in Palestine is only the most recent move in a long history of litigation and agitation by the heirs of Abdul Hamid II against the British, French, Italian, and Greek Governments. Some aspects of the matter came before the Mixed Arbitral Tribunals set up under the Treaty of Lusanne. The Franco-Turkish M.A.T. on 8th April, 1930, the Anglo-Turkish M.A.T. and the Italian M.A.T. on 16th December, 1930, declared themselves incompetent, i.e., without jurisdiction to entertain the claim of the heirs. Many of the arguments set out herein will be found in written pleadings exchanged between the claimants, a majority of the heirs, and the British Government in the case before the Anglo-Turkish M.A.T., and also in the judgments of the M.A.T.s, though of course the judgments in so far as they touch the principles of the claim are obiter since the want of jurisdiction was a complete answer to the claim before those Tribunals.

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* No. ~~38171/34 [No. 16]~~ 17

However the arguments will be found to be considerably different in form because, since that date, the heirs have obtained a long and able Opinion from M. Politis the well known international lawyer. As the petition in the Court at Jaffa does not set out any of the arguments on which the claim is based it is necessary to marshall all the arguments which might reasonably be required by the Government of Palestine. When the claim is actually argued it seems safe to assume that the arguments for the heirs will be almost entirely based on the Opinion of M. Politis. Accordingly constant reference will be made to that Opinion on the basis that it contains the arguments which will be used to support the claim in Palestine.

It is clear that this claim is being brought by those interested in putting forward the contentions of the heirs so that if the claim is dismissed all local or municipal remedies may be said to have been exhausted. It is probable that after this, strenuous efforts will be made to obtain some form of international adjudication on the matter. For this reason the Government of Palestine may well consider that it should be careful only to advance arguments which will be advantageous both in the Palestinian Courts and before an International Tribunal if the matter should ever be considered there. The necessity for caution is shown by the fact that M. Politis has attempted to turn some of the arguments of the British Government in the pleadings before the M.A.T. against itself.

Generally speaking the heirs claim that all the private property of Abdul Hamid in the former provinces of the Ottoman Empire belong to them as inheritors of the Sultan's estate. The contention of the Palestinian Government must be that if the property claimed was part of the private property of Abdul Hamid which was administered by the Civil List and subsequently transferred by the Iradés of 1908 and 1909 to the Turkish state, then, under Article 60 of the Treaty of Lusanne, this has become the absolute property of the Palestinian state.

Article 60 runs as follows:

> " The States in favour of which territory was or is detached from the Ottoman Empire after the Balkan wars or by the present Treaty shall acquire, without payment, all the property, and possessions of the Ottoman Empire situated therein.
>
> " It is understood that the property and possessions of which the transfer from the Civil List to the States was laid down by the Iradés of the 26th August, 1324 (8th September, 1908), and of the 20th April, 1325 (2nd May, 1909), and also those which, on the 30th October, 1918, were administered by the Civil List for the benefit of a public service, are included among the property and possessions referred to in the preceding paragraph, the aforesaid States being subrogated to the Ottoman Empire in regard to the property and possessions in question. The Wakfs created on such property shall be maintained . . . .
>
> " The provisions of this Article will not modify the juridicial nature of the property and possessions registered in the name of the Civil List or administered by it, which are not referred to in the second and third paragraphs above."

In the first place it is extremely likely that the lands claimed in the petition in Jaffa are lands which may be called Iradé lands, i.e., lands purported to be transferred by these Iradés. It is true that theoretically a claim might be made by the heirs to property which was not included in the Iradés and which therefore would not be covered by the provisions of Article 60 regarding the acquisition of the lands transferred by the Iradés. The concluding sentences of Article 60 make this clear:

> " The provisions of this Article will not modify the juridicial nature of the property and possessions registered in the name of the Civil List or administered by it, which are not referred to in the second and third paragraphs above . . . ."

If such a claim were made different considerations would arise. However, it is reasonable to suppose that the property claimed in this action is governed by the Iradés.

At first the argument that this property has become the absolute property of the Palestinian State appears self-evident from the words of Article 60. It is necessary to summarize the main contentions adopted by the heirs which are against this point of view.

It is agreed by them that Article 60, paragraph 1, provides for the acquisition without payment of all the property and possessions of the Ottoman Empire by the States in whose favour territory was detached from that Empire. As to the second paragraph it is maintained, however, that this means that the property transferred by the Iradés was to be acquired by the States subject to " subrogation " to the Ottoman Empire in respect of that property. Subrogation, the argument continues, means that the successor States should be substituted in the rights which the Ottoman Empire might have in the properties, and these rights depend on the validity or invalidity of the two Iradés according to Turkish Law. As the Iradés were invalid the property never belonged to the Ottoman Empire and therefore subrogation to that Empire means that the succession States acquired no rights in the properties. This is a summary of the main argument by the heirs as can be seen in the Opinion of M. Politis.

The first issue is whether Article 60, paragraph 2, really means what the heirs say it does mean from the point of view of grammar and construction. According to their view the last participial clause of paragraph 2 only applies to the classes of property mentioned there, namely (1) Iradé property (2) property administered by the Civil List for the benefit of a public service. The result of this construction is that three classes of property are governed by the Article, namely:

> " 1. The properties which are ceded without payment to the successor States; they are those belonging to the Ottoman State (paragraph 1).
>
> " 2. The properties which are not necessarily ceded, but with regard to which the successor States are subrogated to the Ottoman Empire, which means that the successor States only become final owners thereof in the event that it is shown that the Ottoman State was the owner thereof, but that, in the absence of such proof, they must restore them to their legitimate owners; they are:
>
> " (*a*) The properties covered by the Iradés of 1908 and 1909, and
>
> " (*b*) The properties which, on the 30th October, 1918, were administered by the Civil List for the benefit of a public service (paragraph 2).
>
> " 3. The properties which henceforward are to be maintained, and consequently restored by the successor States to their legitimate owners; they are:
>
> " (*a*) The properties registered in the name of the Civil List or as administered by it, as well as those registered in the name of the Sultan, and not referred to by Article 60 of the Treaty of Lausanne, that is to say not covered by the Iradés of 1908 and of 1909, or not administered on the 30th October, 1918, by the Civil List for the benefit of a public service (paragraph 4); and
>
> " (*b*) The Wakfs, even (sic) constituted on the properties covered by these Iradés or on properties which, on 30th October, 1918, were administered by the Civil List for the benefit of a public service (paragraph 2, *in fine*)."

This construction cannot be accepted. The contention of the Palestinian Government must be that only two classes of property are governed by Article 60, namely, class 1 above and 3 (*a*). Paragraph 2 according to this construction is including in class 1 property about which there might be some doubt and explaining what the obligations of the States would be in respect of such property, namely, subrogation to the Ottoman Empire and respect for the Wakfs, and here subrogation has a meaning different to that attached to it by the heirs.

One of the main arguments by which the heirs support their construction of Article 60 is by an examination of the discussions and conferences leading up to the drafting of Article 60. It is probable that the rules of evidence in Palestine as in England would exclude evidence of this nature. Caution should be exercised in any attempt to exclude this evidence in view of the possibility of International litigation on the matter. It is very desirable that the heirs should then not be able to say that they had lost their claim in Palestine because this material evidence was inadmissible by Palestinian Law. The rule excluding preliminary negotiations is a rule of municipal law which, rightly or wrongly is not admitted in International Law and in many foreign system of law.

In this case the history of the negotiations does not advance the matter any further, and it would be regrettable if the heirs could point to the defects of the local rules of evidence as the reason for their want of success.

Even as stated by M. Politis in his Opinion, the negotiations previous to the signing of the Article seem inconclusive. It is clear that the Turks at *Lausanne* were anxious either to lay claim to the valuable oil fields in Mosul or at least to be credited with the value of these oil fields. It can be said that negotiations leading up to the drafting of the Article do not help to elucidate its meaning in view of the divergence of opinion between the Turkish and Allied delegations.

Turning to the examination of the actual words of the Article, the heirs maintain that as regards the property covered by the Iradés the succession States are " *subrogés* " to the Ottoman Empire, and that as the Ottoman Empire was not the owner the States are not owners either. It will be seen that the words are " *les dits états étant subrogés a l'empire Ottoman en ce qui concerne ces biens et propriétés.*" In order to find out in respect of what " *biens et propriétés* " the States are subrogated, one must see to what the word " *ces* " refers. According to the heirs, who however do not consider this grammatical point at all, it must refer to the subject of the second paragraph, namely, " *les biens et propriétés dont les Iradés ont ordonné le transfert.*" Actually " *ces* " would seem to refer to " *biens et propriétés* " which have been last mentioned and whose place in the sentence is nearest to the word " *ces* ". In this case then " *ces* " refers to " *les biens et propriétés visés a l'alinéa précédent* ", i.e., to those properties covered by the first paragraph which were to be acquired without payment by the States. The result of this construction is that paragraph 2 of Article 60 is a paragraph explanatory of paragraph 1, as is shown by the words " *il estentendu* ". If, as is contended, paragraph 2 is laying down provisions for a different class of property it is a little

difficult to see why the paragraph is begun by these words. The explanation of paragraph 2 covers several points in regard to the property ceded absolutely to the States under paragraph 1:

(i) The properties shall include
  (*a*) property covered by the Iradés.
  (*b*) property administered by the civil list for the benefit of a public service.
(ii) The states are subrogated to the Ottoman Empire in respect of all the property covered by paragraph 1.
(iii) The Wakfs on such property must be respected.

The effect of this interpretation of Article 60 is very different from that of the heirs. It means that the States are subrogated to the Ottoman Empire in respect of the whole of the property including property which was not transferred by the Iradés, but was the property of the Ottoman Empire either before or after 1908 and 1909. It also means that the Wakfs on all this property must be respected; according to the other construction only the Wakfs on Iradé property must be respected.

With regard to the word "*subrogés*", it is maintained by M. Politis that it means that the States would or would not acquire the properties according as to whether they had or had not become the property of the Ottoman Empire. In the opposite view this cannot be correct, since paragraph 1 says in terms that the States shall acquire these properties and if they acquired these properties as owners under the Treaty it cannot be claimed that the owners are bound to deprive themselves of their capacity of owners by the very instrument which made them so. The word "*subrogés*" simply means that the States in question in their capacity as owners, will be subrogated to the former owners and must respect all other rights already existing, such as servitudes, usufructs, leases, etc.

Two points go to show that this latter construction of the paragraph is the correct one. Firstly it is admitted by M. Politis (p. 14) that on his construction only the Wakfs on the Iradé property and on the property administered for the benefit of a public service were to be respected. On the construction adopted herein all Wakfs were to be respected. This seems to be clearly the correct interpretation. At the 2nd meeting of the First Committee on the 11th May, 1923, the Italian delegation as recorded in the minutes "*déclare reconnâitre les droits des vakoufs musulmans*" in the Dodecanese on the ground as appears from a summary of the discussions in the possession of the Foreign Office that "The case of the Dodecanese was not covered by existing Treaties in the same way as territories detached in favour of Greece and Yugoslavia", who were, of course, both parties to the Treaty of Lausanne. This declaration of the Italian delegation was followed by a similar declaration by the British delegation as regards Cyprus. This island would, of course, not have been covered by the words of Article 60, which only applied to territory detached from the Ottoman Empire after the Balkan wars or by the Treaty. It is difficult to understand why, if the heirs are right, all Wakfs should be respected in the Dodecanese and in Cyprus while only Wakfs over the two classes of property mentioned should be respected in the succession States. Also the arbitrary selection of Wakfs over "Iradé" and "public service" property as worthy of respect while rejecting Wakfs over other State property appears inexplicable. The only rational construction is that all Wakfs over all State property should be respected.

It is argued that "subrogés" cannot mean that the States only acquire the Iradé property until some private owner arrives who can prove the property belonged to him and not to the State. This argument is strengthened by the fact that the opposite contention involves applying the same consequences to property which on 30th October, 1918, were administered by the Civil List for the benefit of a public service. It is difficult to believe that it was contemplated depriving any public service of sources of revenue by allowing claimants to obtain the properties in question. The correct view seems to be that paragraph 1 transferred all State property to the States as absolute owners. The second paragraph explained that some of the civil list property was included in paragraph 1 and that certain obligations binding on the Ottoman Empire remain binding on the States. The last paragraph of the Article supports this view, since it says that the provisions of the Article will not modify the juridical nature of the property and possessions registered in the name of the Civil List or administered by it which are not referred to in the 2nd paragraph. This 4th paragraph clearly assumes that the 2nd paragraph may have modified the juridical nature of property included in its provisions. If the Iradé property is really private property, then paragraph 2 lays down that for the purposes of the Treaty this property is included in the property referred to in the first paragraph. M. Politis (p. 13) says that the 4th paragraph means that the properties referred to in paragraph 3 must be restored to their owners, and he agrees the paragraph does not include Iradé property. In effect he is giving the same

meaning to paragraph 2 as to paragraph 4, since his contention is that the heirs are the owners and therefore the properties must be restored to them. It is true that he attempts to differentiate between the two paragraphs by saying that under paragraph 2 the States become final owners if it is shown the Ottoman State was the owner thereof. In reality that is not a real difference between the paragraphs. In addition, the heirs contend that paragraph 2 is a compromise between the two views: That all the Iradé property was private property of the Sultan administered by the Civil List, and the other view, that it was State property. Against this it is maintained that except perhaps for bargaining purposes at Lausanne, the situation was clear that the Iradé property was in fact and probably in strict legal theory the property of the State. Accordingly the matter was put beyond doubt and the fact was made to agree with the theory by paragraph 2 of Article 60.

The position that the Iradés had really transferred the property to the State was recognized again in Article 60. The third paragraph refers to the "*biens et propriétés passés de la Liste Civile à l'Etat*". The word "*passés*" clearly involves the recognition of valid transference, and the passage certainly refers to the Iradé property. The notes of the sitting of 3rd July, 1923, show that paragraph 3 was drafted to deal with the same kind of property as that covered by paragraph 2, owing to the different situation existing between Greece and Turkey as to these properties.

Besides this further recognition in the Treaty, it can be shown that the Turks themselves recognized that this property had been transferred by the Iradés. A decree law of 8th January, 1336 (1920) purported to order the return of all the properties covered by the Iradés with certain exceptions. Quite apart, for the moment, from any question of the validity or invalidity of these Decree Law it clearly recognized the efficacy of the Iradés: "*Toutes les propriétés . . . . transférés par inventaire au Malié (Ministère des Finances) par la liste Civile imperiale en vertu d'Iradés en date . . . .*" The word "*Transferés*" like "*passés*" in Article 60 recognizes the validity of the Iradés. The heirs argue that the Iradés are invalid, but that even if they were not invalid they have been repealed by this Decree Law. It may be answered that if the Decree Law is invalid then the repeal was not effective and the Iradés stand. It will be shown later that the Decree Law is not effective.

Another official recognition on the part of the Turks themselves of the validity of Iradés is probably contained in the law of 13th March, 1924, contained in the Turkish *Journal Officiel* No. 63, 6th March, 1924, which provided for the abolition of the Khalifat and the expulsion of the members of the Ottoman Dynasty from the Territory of the Turkish Republic. Article 10 provides "*Les immeubles dits Emlaki-Hakkanie qui avaient été antérieurement transférés à la nation . . . . sont acquis à la nation.*" If the words "*Emlaki-Hakkanie*" refer to Iradé property, as it is probable they do, then the transfer carried out by the Iradés is confirmed by this Article.

It will thus be seen that even admitting that the States would have to prove that the Iradés did transfer the properties from the Civil List to the State, the official recognition of the Iradés can be proved by these enactments. Actually of course the case for the States rests on the contention that by Article 60 Iradé property was deemed irrevocably to be State property.

The position adopted before the M.A.T. by the British Government was that the validity of the Iradés was not in question. The Treaty of Lusanne had by wording of Article 60 recognized the Iradés as valid by including the Iradé property in the category of State property. This point of view is supported by the judgment of the Anglo-Turkish M.A.T. "*. . . . les droits qu'exerce aujound'hui le Gouvernement britannique sur les biens en litige . . . . ont leur source juridique dans un acte translatif accompli par l'Etat turc dans la plénitude de sa souveraineté et sanctionné par les dispositions de l'article 60 du traité de Lausanne, revêtant ainsi la légimité quit appartient aux actes accomplis selon le droit des gens.*"

If this interpretation is adopted it can be justified on the different constructions of the word "*subrogés*". If "*subrogés*" has the wide meaning applied to it by the heirs, then it must be understood to mean subrogated to the Ottoman Empire on the basis that the Treaty itself is unassailable. Article 60 makes the transfer of the Iradés valid, but, subject to this irrebutable presumption, the succession states are subrogated to all the rights and obligations of the Ottoman Empire. If the word "*subrogés*" has the limited meaning of subrogation in regard to leases, servitudes, etc., then the heirs can only make claims founded on such leases or servitudes.

While the decisions of the M.A.T. are not in a strict sense binding on the Palestinian Courts, they are clearly deserving of the greatest respect, and any judgment in Palestine founded on the decision of the Anglo-Turkish M.A.T. would be of great assistance in any International proceedings on the same claims.

If the argument that " *subrogés* " applies to all the property is wrong then the resulting arguments for the Palestinian government are as follows: Subrogation has the meaning which has been ascribed to it above, namely, respect for leases, servitude, etc. In this event the heirs can advance a powerful argument against this construction, namely, that it seems unnecessary to have stipulated that Iradé property is subrogated in this sense when according to International law the property comprised in paragraph 1 would be subject to this kind of subrogation. If " *subrogés* " is then held to have the meaning ascribed to it by the heirs then it is open to the Palestinian Government to argue that in any event the Iradés did transfer the ownership from the Sultan or his family, or from the Civil List if the ownership was there, to the Ottoman Empire.

This part of the argument has not hitherto been gone into by the British Government in any detail, on the ground that Article 60 was not capable of this interpretation and because it was not necessary for the dismissal of the claim before the Mixed Arbitral Tribunal. For these reasons only general observations can be made as an examination of the question would involve a close study of Turkish law. The strongest general argument in favour of the validity of the Iradés is that advanced above, that they have received official Turkish recognition and especially that their purported repeal is invalid. It was admitted, in *contre réplique* of the British Government in the proceedings before the M.A.T. that the validity of the Iradés was a pure matter of Turkish law. This was, perhaps, an unwise admission, since it could be contended that in considering whether the Iradés were valid or not within the meaning of the Treaty, *de facto* recognition by the Turkish Government of their validity coupled with the fact that the properties had apparently ceased to be administered by the Civil List, would prevent any person maintaining that the Iradés were invalid. In other words the validity of the Iradés could not be questioned as they had always been assumed to have been valid from the date of their promulgation to the Treaty of Lusanne. This is supported by some passages in Annex 3 to M. Politis' Opinion, which is a letter of 20th December, 1921, from the Minister of Agriculture to the Sublime Porte. As his letter reveals, these properties were allotted in 1919 to the Imperial Ministry of Finance; and though he argues that this was an illegal confiscation, it shows that the properties were being dealt with on the basis that they were not the private property of the Imperial family. Further on he says negotiations in 1914 between the Turkish and English Governments concerning these properties could not effect their judicial nature. It is likely he is referring to some negotiations over concessions; but whatever their subject, they go to show that the Turkish Government then regarded the properties as theirs to dispose of. It is impossible at this stage to go into the actual details of Turkish law regarding the invalidity of the Iradés on the ground of non execution. The fact that the property purported to be transferred was never actually registered in the name of the Ottoman Empire does not seem necessarily to invalidate the Iradés.

It can it is felt be safely assumed that after the Iradés the income from the properties was received by the States, and not by the Imperial family. A special department of the Ministry of Finance administered these properties for some time. It would be more correct to say that the Iradés transferred the property to the State, which could and perhaps ought to have procured the necessary alterations in the Cadastre.

It is really the reverse of logical to argue that if a law orders something to be done, this same law is invalid if that something is not done.

In the case of the Iradés the argument of the heirs cannot even be put as high as this. The Iradés ordered the transfer of the properties and the fact that they were henceforward administered and the income received by the State was consequent on the transfer having been legally effected by the Iradés. M. Politis asserts that the Iradés were invalid because they produced no effect: Any effect they did produce he argues was illegal because the Iradés were invalid. This is an argument in a circle which does not prove that the Iradés were invalid.

It may be true that the entries in the cadastre were not changed, but such a change would only have been one of the effects of the Iradés. The heirs base their claim on this ground, namely, that an entry in the register is absolute proof of ownership which cannot be impugned in any way.

Whatever the old Turkish law may be on the subject, it is very doubtful whether that can be made the basis of the claim by the heirs. If, for instance, the Treaty of Lausanne had said even more clearly that the States should acquire the Iradé property, it is evident that the heirs could not have claimed the property on the ground of the entries in the cadastre. In that event the provisions of the Treaty would have overridden the rule that registration gives an absolute title.

The provisions of the Iradés, it can well be argued, override the rules about registration. In any event non-registration in the name of the State does not prove that the Iradés were invalid.

It should be noticed also that the *réplique* of the heirs before the M.A.T. (which was signed by two Turkish lawyers) did not put the objections to the Iradés in the same way as M. Politis. The main arguments in the *réplique* was that the Iradés were valid but that they only provided a means of administering the Sultan's private property. " *Les Iradés . . . . n'ont pour object que la designation due Department chargés de la gérance des propriétés . . . .*"

A secondary objection was that the Iradés were invalid because they had never been approved by the Council of Ministers and Parliament. The authors of the *réplique* evidently did not feel justified in arguing that the Iradés were invalid on the grounds advanced by M. Politis, though these reasons are perhaps adumbrated in a few sentences of the *Notes d'Audience* (p. 8), which is the written report of the arguments addressed to the Court by M. Mazliah the counsel for the heirs at the hearing in Constantinople.

As to the other ground of invalidity of the Iradés, namely, that they were never properly approved, it may be assumed that there is no substance in this objection or it would have been reproduced by M. Politis.

If we assume that the Iradés are valid, then we are confronted by the argument that in any event the Iradés were repealed by the decree law of 1920.

> " *Décret-loi consécutif à l'Iradé Imperial ordonnant le retour à la Liste Civile Imperiale de toutes les propriétés, institutions, concessions et terrains ayant été transférés au Malié en vertu d'ordonnances de Sa Majesté en date des 1 Septembre 1234 et 21 Avril 1325.*
>
> "*Art. 1er: Toutes les propriétés, fermes institutions et concessions, ainsi que tous terrains transférés par inventaire au Malié par la Liste Civile Impériale en vertu d'Iradé en date des 1er Septembre 1324 et 21 Avril 1325 doivent faire de nouveau retour à la Liste Civile, exception faite de celles de dites propriétés que le Malié aurait vendues ou transférées à d'autres ou qui seraient reparties aux refugiés et sous reserve de recours en justice pour tous ceux qui auraient des revendications relativement aux susdites propriétés.*"

Mention has already been made of the recognition of the validity of the Iradés which is the basis of this Decree Law. M. Politis says that the validity of this Decree Law is incontestible, and examines the objection that it was never ratified by Parliament. It might be unwise to object to the law on this ground and since such objections might go to show that the Iradés were invalid for want of ratification.

Before adopting any such argument a detailed examination of the relevant Turkish Laws and of the actual circumstances surrounding the Iradés and the Decree Law should be made.

There is however a more decisive objection to the Decree Law. It was passed in 1920 when in fact Palestine was in occupation of the allied troops, and the passing of the law was the occasion of a joint protest by the Allied High Commissioners in Constantinople announcing the refusal of the allied States to recognize the validity of the law of 1920. M. Politis argues that military occupation does not deprive the sovereign of legislative power. On the contrary it is a principle of Public International Law that a State cannot legislate for territory occupied by the enemy. Any other conclusion would lead to the most absurd results. It is well recognized that where part of a country has been occupied, the laws of the country which has been thus occupied remain applicable if they were in force at the time of the occupation but not otherwise. Consequently the Decree Law of 1920 was not applicable to Palestine as it was of no legal effect in that country.

These are the main arguments which can be advanced against the claim of the heirs. In addition it may be stated that there is a certain ingenuousness on the part of M. Politis in emphasizing the high regard the Turks had for the sanctity of the rights of the Imperial family. The Treaty of Lausanne came into force on 6th August, 1924, and before that date, on 3rd March, 1924, the law for the abolition of the Khalifate was passed. This law by the article which has already been cited would prevent any claim being presented in Turkey on the same basis as the present claim in Palestine. It seems a little incongruous that Turkey should be able to retain Iradé property and that Palestine should not. The fact is that Iradés were in reality accepted in Turkey as being operative, and that the arguments advanced at Lausanne were mainly " bluff " where the Iradés were concerned. Actually on two occasions the transfer by the Iradés was admitted.

On 18th May, 1923 (Procés-Verbal No. 5), Zékial Bey is reported to have said:—

" que la loi turque a transfére au Trésor les biens de la Liste Civile qui avaient été acquis avec les deniers de l'Etat; mais les biens privées, qui n'ont cessé d'être la propriété de la famille souveraine, continuent à faire partie de la Liste civile. Le Gouvernement turc ne demande pas que les biens de la primière catégorie lui soient rendus, mais il estime que les biens de la seconde catégorie ne peuvent pas être cédés gratuitement."

On 23rd June, 1923, he said:—

" qu'il n'y a pas de difficulté veritable, les Iradés spécifiant que les biens inscrits au nom d'Abdul Hamid et administrés par la Liste civile sont transférés a l'Etat."

In those circumstances the Ottoman Empire was able by the law of 3rd March, 1924, to retain the Iradés property without payment; on the principle of subrogation adopted by the heirs themselves the States have the same rights as the Ottoman Empire, to retain the property.

Department of the Treasury Solicitor,
Storey's Gate, S.W.1.
November, 1934.

38171/34 [No. 24]. No. 20 PROOF.

TREASURY SOLICITOR

to

COLONIAL OFFICE.

The Treasury Solicitor presents his compliments to the Under-Secretary of State and with reference to previous correspondence in the matter of the claims of the heirs of the Ex-Sultan Abdul Hamid II, transmits herewith, for the information of the Secretary of State for Colonial Affairs, a copy of a note of an interview held between the Solicitor for the heirs and Dr. A. W. Brown, Assistant Treasury Solicitor, on the 18th December, 1934.

Storey's Gate, S.W.1.
19th December, 1934.

Enclosure in No. 20.

CLAIMS OF THE HEIRS OF THE EX-SULTAN ABDUL HAMID II OF TURKEY.

Note of second interview between Mr. Inchbald of Messrs. Bischoff, Coxe & Co., Solicitors for the heirs, and Dr. A. W. Brown, Assistant Treasury Solicitor, on 18th December, 1934.

Reference may be made to the note* of the first interview, on 21st August, 1934.

Mr. Inchbald reminded me that at the previous interview, I had suggested that it would be interesting to hear more of the attitude of the French Government towards the claimants in respect of the property in dispute in the mandated territory of Syria. He had therefore called to bring to my attention the Convention between France and Turkey, signed at Ankara on the 27th October, 1932, relating to questions affecting Turkish property in Syria and Syrian property in Turkey. The Convention was published in *Le Journal Officiel de la Rèpublique Française* of the 18th August, 1933.

He stated that the negotiations on behalf of the heirs with the French authorities had reached an advanced stage and questions of amount were about to be discussed, when owing to the repercussions of the unfortunate Stavisky case—further progress had been temporarily held up. He added that it was recognized that the claims of the heirs came within the terms of the Franco-Turkish Convention, and that Mr. S. Gunsberg (the American dentist of Constantinople, who was very active on the part of the heirs at the time of the Mixed Arbitral Tribunal proceedings), had recently been assured by the Turkish Foreign Office that the claims of those of the heirs now Turkish subjects would be pressed by the Turkish Government under the Convention. Mr. Inchbald also intimated that Monsieur Politis had recently met the Turkish Foreign Minister in Geneva, and had been assured by him that the matter of the claims of the heirs had already been taken up with the Foreign Office in London through the Turkish Ambassador there, and that the Turkish Government would continue to press the claims until some satisfactory arrangement in regard to their adjustment was reached. The heirs had been advised by Monsieur Politis that, if necessary, it should be possible to bring their claims before the Council of the League of Nations and/or the International Court at The Hague, and that as to some considerable extent the remuneration receivable by Monsieur Politis depended on a satisfactory result, Mr. Inchbald thought he could be depended upon to do his utmost! Mr. Inchbald referred to what he called the admitted rights of the heirs in respect of trusts on the property which passed under the Treaty of Lausanne and in respect of the ancient domains of the Turkish Sovereign. He suggested that His Majesty's Government could hardly refuse to arbitrate on these matters, and that whilst a fair settlement might possibly be negotiated now, it might be much more difficult for the Government of the United Kingdom to secure an advantageous one at a later date. Incidentally, he mentioned that the heirs had valued their claims as against the French Government at approximately £40,000,000, and that they put the value of their claims against the British Government at, roughly, double that amount. He further said that his present clients had already spent some £200,000 in connexion with the case, and were financing the heirs to the extent of about £3,000 a month.

I told Mr. Inchbald that I could not agree that there was any way in which the claims of the heirs could be dealt with by the League or before the International Court without the consent of the Government of the United Kingdom, which consent was, so far as I was aware, out of the question. The benefit of the cessions under the Lausanne Treaty had gone to the local Governments, and there could be no reason why

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* Enclosure in No. ~~38171/34 [No. 12]~~. 14

His Majesty's Government in the United Kingdom should voluntarily accept any responsibility. It was for the heirs to take appropriate proceedings in the local Courts, and in fact I understood that one of them, Prince Selim, had recently lodged a Petition in the Land Court at Jaffa.

Mr. Inchbald admitted that he was aware of this; but whilst his firm are acting generally for Prince Selim, they are not concerned in regard to the Palestinian proceedings, which they felt would probably be withdrawn or at least not actively proceeded with.

I explained to Mr. Inchbald that having very carefully considered Monsieur Politis' opinion, though fully recognizing its skill as a piece of special pleading, I did not consider either his interpretation of the terms of the Treaty or his statement of the material facts as correct, and consequently disagreed with his conclusions.

Mr. Inchbald finally emphasized the peculiar position of the Caliph, who he said was a man of very high moral character who refused to accept any personal profit from the proceedings, but regarded himself as trustee for the heirs generally. Mr. Inchbald understood that there had already been some direct communications between the Caliph and His Majesty The King, and that questions of amount as a basis of settlement had been discussed. He thought it likely that the Caliph might seek to resume such direct negotiations and that, having regard to the political importance of the Caliph's actions, the Foreign Office would surely treat his personal intervention seriously.

I took note of Mr. Inchbald's statements and arguments, whilst emphasizing that they did not seem to me to introduce considerations other than those which had to my knowledge already been very fully and carefully considered, I felt that there was nothing in them which would lead any Department of His Majesty's Government to change its attitude in regard to the claims.

Mr. Inchbald asked if the heirs would in any event be compelled to go to the great trouble and large expense necessary to prepare for an international arbitration. I replied that if he could convince me that they were in a position to enforce such an arbitration, and that in the course thereof they might have reason to be confident of success, at least in part, the matter might be further discussed, so an actual arbitration might be avoided. That was however at the moment very problematical, and I was sure that on the part of His Majesty's Government no one would consider present negotiations with a view to a cash settlement. I emphasized again that His Majesty's Government in the United Kingdom had received no benefit from the transfer of the property in question, and if there were to be negotiations for " a reasonable cash settlement ", he might well consider whether these should not properly be opened with the respective governments of the territories where the property is situate.

In the course of the interview, Mr. Inchbald stated that Mr. Stewart had made clear both to the Prime Minister and to the Chancellor of the Exchequer his interest in the matter of these claims, when agreeing to accept the post of administrator of the depressed areas of England and Wales.

A. W. BROWN.

Treasury Solicitor's Department,
18th December, 1934.

38171/34 [No. 20]. No. 21 PROOF.

PALESTINE.

THE SECRETARY OF STATE

to

HIGH COMMISSIONER.

(Confidential.)

SIR, Downing Street, 1st January, 1935.

I have the honour to refer to Mr. Hall's despatch No. 869 of the 13th October*, enclosing a petition which has been filed in the District Court of Jaffa on behalf of His Highness Prince Mohamed Selim, a son of the late Sultan Abdul Hamid II of Turkey, in respect of certain lands and properties situated near the village of Moharraka, and to transmit to you a copy of correspondence† with the Treasury Solicitor on this subject.

2. The Secretary of State for Foreign Affairs is also being consulted regarding this petition, and when his views have been received a further despatch will be addressed to you on the question whether the petition should be allowed to proceed.

3. It will be observed that the memorandum which accompanies Dr. Brown's letter of the 3rd December‡ has been prepared in order that the authorities in Palestine who will have to deal with the matter may be furnished with information regarding the arguments which have been made use of from time to time in answering the claims made against His Majesty's Government. The memorandum should be most valuable to the authorities in Palestine in their conduct of any case which may be heard in the local Courts.

4. Frequent references are made in the memorandum to the Opinion of M. Politis. This Opinion was obtained on behalf of the heirs and a copy§ is enclosed with this despatch for reference.

5. In his letter of the 3rd December, Dr. Brown refers to various assignments by the heirs of the benefit of their claims to American, English and Canadian companies. In this connexion I enclose for information a copy of the correspondence‖. It will be observed that the Consolidated Eastern Corporation Limited, which was incorporated in Canada, purports to have taken over the rights of " a majority of the heirs " in the matter of their claims in respect of the late Sultan's properties, while, on the other hand, Mr. Winston asserts that he represents the various companies detailed in his letter of the 27th June, and intimates that no one except himself has any legal right to negotiate with His Majesty's Government in the matter.

6. I also enclose for information a copy of a despatch from the Secretary of State for Foreign Affairs to His Majesty's Representative at Angora, regarding an intimation by the Turkish Government that they will support the claims of those heirs of the late Sultan Abdul Hamid who are Turkish citizens for the restoration of various properties situated in the territories detached from Turkey under the Treaty of Lausanne.

I have, &c.,

P. CUNLIFFE-LISTER.

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* No. ~~38171/34 [No. 15]~~. 16 † ~~No. 38171/34~~ [Nos. ~~16~~ 17 and ~~19~~ 19]. ‡ No. ~~38171/34 [No. 19]~~. 19
§ Not reprinted. ‖ ~~No. 38171/34~~ [Nos. ~~1, 5,~~ 12] and enclosures to [Nos. ~~11,~~ and ~~N~~].

Abdul Hamid—(C.21839/63). 12. 8.9 14 13 15

79071/35 [No. 2]. No. 22. PROOF.

FOREIGN OFFICE

to

COLONIAL OFFICE.

SIR, Foreign Office, S.W.1, 3rd January, 1935.

I am directed by Secretary Sir John Simon to invite a reference to your letter of the 14th November* in regard to the filing of a petition in the District Court of Jaffa on behalf of His Highness Prince Mohamed Selim, one of the heirs of the ex-Sultan Abdul Hamid.

2. It is not clear to the Secretary of State whether the Palestine Crown Actions Ordinance No. 30 of 1926 does in fact give the High Commissioner for Palestine discretion to refuse his fiat in the case of a petition such as that of Prince Mohamed Selim, this being a claim of the kind contemplated in clause 3(i) (*c*) of the Ordinance. He assumes however that in any event, as in the case of a Petition of Right, to which the Prince's petition would (except for the fact that it is not founded in contract) appear to be roughly analogous so far as procedure is concerned, the fiat would only normally be refused in a case which either could not properly be made the subject of proceedings against the Crown or Government or which was clearly frivolous or in bad faith. Further, in the present instance, it seems to him that if the claimants were prevented from bringing an action in the local courts, they would certainly pursue their claim with increased vigour against His Majesty's Government by whom they have hitherto been told that their proper remedy, in so far as they have one at all, is by proceedings in the appropriate local courts. In these circumstances, and even if it should be the case that the High Commissioner could properly refuse his fiat, Sir John Simon is disposed to concur in the view expressed in the Treasury Solicitor's letter of the 3rd December† to you, that it would be undesirable for him to do so.

3. As regards the issues to which Prince Mohamed Selim's petition itself gives rise, the Secretary of State finds himself in substantial agreement with the Treasury Solicitor's memorandum enclosed in the letter to which reference is made in the preceding paragraph. He would, however, be glad if you would lay the following further observations before Secretary Sir Philip Cunliffe-Lister for his consideration.

4. The Government of Palestine will presumably be furnished with copies of the pleadings in the case of the heirs before the Anglo-Turkish Mixed Arbitral Tribunal, and of the judgments of that and the Franco-Turkish and Italo-Turkish tribunals. They will doubtless be furnished also with a copy of M. Politis' recent opinion on behalf of the heirs.

5. It is not, of course, known at present in what way the claim will be put, and Sir John Simon would therefore be glad to have an opportunity of commenting on the petitioner's statement of claim, or alternatively on the defence thereto which will eventually be prepared by the Government of Palestine. In particular, the statement of claim will no doubt show whether the petitioner is going to base his claim on the ground that the particular property claimed is not " Civil List " or " Iradé " property at all, thus coming under the last paragraph of Article 60 of the Treaty of Lausanne; or whether the claim will be brought on the basis that the property is " Civil List " or " Iradé " property, but that on account of the alleged invalidity of the Iradés, Article 60 does not operate to transfer it to the Governments of the Succession States. If the claim is put on the former basis, it may be necessary to make careful researches in order to ascertain whether or not the property is " Iradé " property. At present such researches as it has been possible to make into this question have not given any clear indication of the position. It seems, however, probable that the case will be put on the latter ground, since the object of these proceedings is presumably to test the whole claim of the heirs of the ex-Sultan, which claim is in the main based on the view that as the Iradés were invalid, the properties covered thereby never belonged to the former Ottoman State and consequently did not pass to the Governments of the Succession States under Article 60 of the Treaty.

6. Assuming that the case is put in this way, it seems clear that the main argument for the Government of Palestine must be that paragraph 2 of Article 60 is merely subsidiary to and explanatory of paragraph 1, and that the intention of paragraph 2 was not to create a right separate and distinct from that contained in paragraph 1 and to which different considerations might apply, but merely to make it clear that certain property, as to which there might otherwise be doubt, was included in the property intended by paragraph 1 to pass in absolute ownership to the Governments of the Succession States. The combined effect of paragraphs 1 and 2 therefore is that the property mentioned in paragraph 2 is deemed to be property which under paragraph 1

* No. ~~38171/34 [No. 17]~~. 17 † No. ~~38171/34 [No. 19]~~. 19.

passes to the Succession States as being " the property and possessions of the Ottoman Empire ". Hence the phrase about " subrogation " must be read subject to the general overriding consideration that all the property in question shall henceforth belong to the Succession States *as owners*. The Succession States are not merely, as the heirs pretend, subrogated to the Ottoman Empire in the sense of having only those rights which the Ottoman Empire had, so that if the Ottoman Empire had no rights of ownership the Succession States will have no rights of ownership either. On the contrary, it is to be assumed, by virtue of paragraphs 1 and 2 of Article 60, that the Ottoman Empire had rights of ownership. The Succession States are, therefore, subrogated to the rights of the Ottoman Empire as owner, so that, for instance, if that ownership was subject to any limitations in the way of existing leases, servitudes, etc., the Succession States would be bound as owners to respect and maintain such rights, being rights less than ownership. The phrase about subrogation of course, on this view, applies to *all* the properties transferred, by both paragraphs 1 and 2 of Article 60, and not merely to the " Iradé " properties.

7. This view is borne out not only by the considerations set forth in the Treasury Solicitor's Memorandum above referred to, but also by the fact that the second paragraph of Article 60 does not purport to make the question of whether or not the " Iradé " properties belonged to the Ottoman Empire, dependent on the *validity* of the Iradés. The second paragraph of Article 60 merely refers to those properties " of which the transfer . . . . . to the State was *laid down* by the Iradés . . . . . and also those which on the 30th October, 1918, were administered by the Civil List for the benefit of the public service ". In the French text the " Iradé " properties are referred to as those " dont les Iradés ont *ordonné* le transfert ". It will be observed that these phrases are merely *descriptive* of certain property. Whether the Iradés were valid or not, there can be no doubt that they did exist, and that they did lay down or order the transfer of certain properties which were mentioned therein. Even if this order was invalid, it was undoubtedly given. Similarly there can be no doubt that, on the relevant date, certain property was in fact administered by the Civil List, etc., whether it ought to have been so administered or not. It would seem, therefore, that the mention of the Iradés and of the Civil List was merely a convenient way of describing certain property and of making it quite clear that the property in question was to come within the ambit of the first paragraph of Article 60. On this view the actual validity or invalidity of the Iradés is irrelevant, an intention to pass certain property being evident, whatever the position may have been as regards the Iradés.

8. The heirs may, of course, argue that, even if this was the case, paragraph 1 of Article 60 only referred to property *belonging* to the Ottoman Empire and that since the Iradés were in fact invalid, the property in question did not belong to the Ottoman Empire. The answer to this seems to be that the second paragraph of Article 60, after describing the property in question, states quite categorically that it is " included among the property and possessions referred to in the preceding paragraph ", i.e. " the property and possessions of the Ottoman Empire ", so that on the wording of the Treaty itself the validity of the Iradés must be assumed for the purpose of interpreting the Treaty.

9. It would seem that in any event a municipal court would scarcely be competent to go behind the wording of the Treaty and give a decision on the validity of certain instruments cited in the Treaty as apparently valid. As a matter of international law indeed, it would scarcely have been possible for the Turkish Government, having signed a Treaty containing an article of this kind, referring to the Iradés in the manner in which they are referred to, subsequently to dispute the validity of those instruments. It is surely evident that the general intention of Article 60 was to state what property did and what property did not pass to the Succession States as owners. The heirs' view amounts to saying that as regards a large class of property, namely the " Iradé " property, Article 60 deliberately settled nothing. It merely mentioned the property, but left quite open the question as to whether or not it passed to the Succession States. This question, according to the heirs, depended on the validity of the Iradés, which was not at the time settled; consequently the heirs claim that the fate of the Iradé property was not determined by the Treaty but was left open for future decision. In the absence of any clear wording in the Treaty, indicating such an intention, it would seem that this interpretation cannot be accepted. If it were true, moreover, one would have expected that either the Turkish Government or one of the other Governments concerned would subsequently have made some proposal for the determination of this important point, which *ex hypothesi* would have been left quite open by the Treaty. But no such move has ever been made by any Government, least of all by the Turkish Government. It would appear, therefore, that the intention was to settle the whole matter once and

for all by Article 60, and as regards the Iradé property such final settlement by Article 60 can only proceed on the basis that the Iradés were for the purposes of the Treaty to be deemed valid, or at any rate that their validity or invalidity was irrelevant for the purpose of determining what property passed.

10. The heirs have in the past shown a tendency to argue that the first paragraph of Article 60, and in consequence also the second paragraph, only purported to transfer to the Succession States rights of *political sovereignty* and not rights of *private law ownership*. This view is untenable, because the political sovereignty over the territories in question had already been passed to the Succession States by previous articles of the Treaty, and Turkey had renounced her rights over those territories (see e.g. the territorial clauses of the Treaty, and Article 16). Article 60 would, therefore, have been quite superfluous if its only intention had been to transfer rights of political sovereignty, and hence its intention must have been to transfer private law rights including, according to the view taken by His Majesty's Government, rights of ownership as thereby understood.

11. It is suggested at the end of page 2 of the Treasury Solicitor's Memorandum that the real object of the proceedings in Palestine may be to provide a basis for a subsequent international claim, assuming that the claim of the heirs were rejected by the Palestine Courts. If in fact, subsequent to these proceedings, such an international claim were put forward, it would have to be based on one or other of the following grounds. First, that a denial of justice had occurred in the Palestine courts. Such a claim could in theory be brought by the State whose national this particular heir is. It would be interesting to know what that State is, in view of the fact that most of the heirs have lost their Turkish nationality. Under international law, however, a mere error or wrong decision on the part of the court, if given in good faith, does not constitute a denial of justice. Something in the nature of corruption, bias, dishonesty, or gross incompetence on the part of the court must be shown. It is, therefore, clear that in actual fact no international claim on that ground will be possible in the present instance. But the court will no doubt take every care in order to avoid any possible subsequent allegation that the case for the heirs was not properly heard or considered, to allow the petitioner, so far as is compatible with the law and procedure of Palestine, to put his case in full and to adduce any evidence, documentary or otherwise, in support thereof which he may consider to have a bearing on the matter. It would also be useful if the judgment of the court, should it be given against the petitioner, could deal with all the points put forward, so that it would not be possible for the heirs thereafter to say that their arguments had not been duly taken into account. If, however, the petitioner should, as part of his argument, discuss the actual validity of the Iradés under Turkish law, Sir John Simon feels that it would be quite proper for the court, if it takes that view, to refuse to go into that question, on the basis that under and for the purpose of the Treaty the validity of the Iradés must be assumed; or alternatively that, on the wording of the Treaty, the actual validity or invalidity of the Iradés is immaterial, an intention to transfer certain property to the Succession States being in any event manifest.

12. The other ground on which an international claim could be put would be that the decision of the court, in so far as it amounted to an interpretation and application of the Treaty of Lausanne, was wrong and therefore amounted to a violation of that Treaty, for which His Majesty's Government must be held responsible. It is not considered necessary to discuss this point at present, since it does not affect the question of the conduct of the proceedings in Palestine. A claim on this ground, if it could be brought at all, could be brought on the simple contention that the Court's decision was wrong. No impropriety in the conduct of the proceedings would need to be shown.

13. A copy of this letter is being sent to the Treasury Solicitor.

I am, &c.,

G. W. RENDEL.

79071/35 [No. 3]. No. 23. PROOF.

MR. J. C. STERNDALE BENNETT (FOREIGN OFFICE)

to

MR. O. G. R. WILLIAMS (COLONIAL OFFICE).

MY DEAR WILLIAMS, Foreign Office, S.W.1, 3rd January, 1935.

In our official letter of today's date*, we are replying to your official letter of the 14th November† about the petition filed in the District Court of Jaffa on behalf of His Highness Prince Mohamed Selim, one of the heirs of the late Sultan Abdul Hamid. I am sorry that this reply has been so much delayed, but the question is a very complicated as well as a most important one, and it has been necessary to go into it with great care.

2. We have not in our letter touched on the defence of the action if and when proceedings actually start in the Palestine courts. Indeed, the time has not yet come to do so. But the issues are of such importance that the case is obviously one in which we cannot afford to run the slightest risk. That being so, and in view of the intricacies of the whole question, we are inclined to think that it would be advisable at the proper moment to give the Government of Palestine the assistance of Counsel briefed from this country. As I have indicated, the point does not arise at present, and does not therefore call for an immediate decision, but we think that it should be borne in mind, and that it should be seriously considered when we have seen the petitioner's statement of his case.

3. I am sending a copy of this letter to the Treasury Solicitor.

Yours, &c.,

J. C. STERNDALE BENNETT.

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* No. ~~79071/35 [No. 2]~~ 22 † No. ~~38171/34 [No. 17]~~. 17

38171/34 [No. 21]. No. 24 PROOF.

COLONIAL OFFICE

to

TREASURY SOLICITOR.

SIR, Downing Street, 4th January, 1935.

I am directed by Secretary Sir Philip Cunliffe-Lister to acknowledge the receipt of your letter of the 3rd December* regarding the claims made against His Majesty's Government by the heirs of the ex-Sultan Abdul Hamid II, and to transmit to you a copy of a despatch† which has been addressed to the High Commissioner for Palestine on this subject.

2. The Secretary of State desires me to convey to you an expression of his thanks for the valuable memorandum which has been prepared in your Department. This memorandum should prove of great assistance to the authorities in Palestine when dealing with this matter.

3. A copy of this letter and of the Secretary of State's despatch to the High Commissioner is being sent to the Foreign Office.

I am, &c.,

O. G. R. WILLIAMS.

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* No. ~~38171/34~~ [~~No. 19~~]. 19 † No. ~~38171/34~~ [~~No. 20~~]. 21

Abdul Hamid—(C.21839/64). 12.

79071/35 [No. 4]. No. 25. PROOF.

PALESTINE.

THE SECRETARY OF STATE

to

THE HIGH COMMISSIONER.

(Sent 7.30 p.m., 22nd January, 1935.)

TELEGRAM.

No. 23. Confidential. My confidential despatch of 1st January*. I agree that you should grant your fiat upon petition by Weinshall.

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* No. ~~38171/34 [No. 20]~~. 21.

Abdul Hamid—(C.21839/68). 12.

79071/35 [No. 8]. No. 26. PROOF.

THE SECRETARY OF STATE FOR FOREIGN AFFAIRS

to

HIS MAJESTY'S REPRESENTATIVE, PARIS.

(Copy received in Colonial Office, 25th January, 1935.)

(No. 206, confidential.)

SIR, Foreign Office, S.W.1, 23rd January, 1935.

With reference to my despatch No. 1816 of the 30th November, I transmit to Your Excellency the accompanying copies of the records of two interviews* between the Assistant Treasury Solicitor and Mr. Inchbald, of Messrs. Bischoff, Cox & Bischoff and Thompson, who, as you are aware from my despatch No. 929 of the 16th June, 1934, are acting on behalf of the Consolidated Eastern Corporation Limited in the matter of the claim of the heirs of the late Sultan Abdul Hamid.

2. You will observe from the second of these two records that, according to Mr. Inchbald, negotiations have been in progress between representatives of the heirs and the French Government who, it is alleged, had recognized that the claim of the heirs fell within the terms of a Franco-Turkish Convention. This is no doubt the Convention the text of which was enclosed in Lord Tyrrell's despatch No. 1207 of the 18th August, 1933.

3. I am not disposed to attach much credence to Mr. Inchbald's statement that these negotiations had reached an advanced stage, or that the French Government had in any way admitted liability, for it is obviously in the interest of the heirs to endeavour to play off the various interested Governments one against the other. Since, however, it is evident that the heirs, or those responsible for promoting their claim, will not readily abandon their efforts to secure damages or compensation, it would be of value to His Majesty's Government in their further dealings with the representatives of the interested parties, and with the Turkish Government, if they could have some general indication of what has passed between the representatives of the heirs and the French Government. I shall therefore be glad if, unless you see objection, you will endeavour as discreetly as possible to obtain any information likely to be of use to His Majesty's Government in this connexion. While doing so there would be no objection to your informing the French Government confidentially of the view of His Majesty's Government that so far as they are concerned the claim of the heirs was disposed of by the judgment pronounced by the Anglo-Turkish Mixed Arbitral Tribunal, but that it may still be possible for the heirs, if they think fit, to pursue their claim in the local courts of the territories in which the late Sultan's estates are now situated.

I am, &c.,

G. W. RENDEL

(For the Secretary of State).

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* Enclosures in ~~No. 38171/34~~ [Nos. 13 and 24].

14 20

79071/35 [No. 8 A]. No. 27. PROOF.

MR. G. W. RENDEL (FOREIGN OFFICE)

to

SIR PERCY LORAINE (BRITISH EMBASSY, ANGORA).

(Confidential.) (Received in Colonial Office 25th January, 1935)

MY DEAR LORAINE, Foreign Office, S.W.1, 23rd January, 1935.

In our printed despatch No. 39 of to-day's date we are sending you copies of the records of two conversations which the Assistant Treasury Solicitor has had with Mr. Inchbald, of Messrs. Bischoff, Cox & Bischoff and Thompson, who, as you are aware from our despatch No. 247 of the 19th June, 1934, are representing the Consolidated Eastern Corporation Limited in the matter of the claim of the heirs of the late Sultan Abdul Hamid.

2. We are asking the Embassy at Paris to try to ascertain discreetly what has passed between the French Government and the representatives of the heirs, and as you will see from the enclosed copy of a semi-official letter to the Dominions Office, we are hoping that it may be possible to obtain light on the extent to which the heirs may have transferred their claims to the Canadian Company. The whole question is of course one of considerable importance, especially as it is clear that, although the heirs, or perhaps rather the promoters of their claims, would welcome a compromise, they are likely to press the case to the bitter end by every means in their power. It therefore behoves us to take every possible step to make our position secure, and with this end in view we should very much like by some means to ascertain how many of the original heirs have in fact throughout retained their Turkish nationality. The position in this respect has always been obscure. On the wording of the Turkish law of March, 1924 we have always considered that *all* the heirs had lost their Turkish nationality. It may be of course that they did so but that they, or at least some of them, have subsequently regained it. But, for the reasons explained in our despatch No. 473 of the 28th November*, the regaining of Turkish nationality would not help them, since it is necessary that they should have been Turkish nationals all along. If we could once establish definitely that there are in fact *no* heirs who have been Turkish nationals all along, we should have a second string to our bow *vis-à-vis* the Turkish Government, since, even if there were heirs who had *not* surrendered their claims to the Canadian Company, the Turkish Government would not be entitled to present an international claim on their behalf.

3. I confess that I am not very hopeful of your being able to obtain the information which we should like to have: but, as you will realize, that information may be so useful that we must make all legitimate efforts to obtain it. I shall of course understand perfectly if you reply that you have no means of getting it in Turkey—indeed I fear that such a reply must be almost inevitable, especially as it is important that the enquiries should not be such as to reveal our hand.

Yours, &c.,

G. W. RENDEL.

Enclosure in No. 27.

(Confidential.)

DEAR SHANNON, Foreign Office, S.W.1, 23rd January, 1935.

We have been looking further into the matter of the claims of the heirs of the late Sultan Abdul Hamid about which Johnstone wrote to you in his letter of the 29th December.

2. It seems to us that there is an obvious connexion between the claim made against His Majesty's Government on behalf of the Consolidated Eastern Corporation Limited (our official letter of the 19th June, 1934†) and the recent approach made to us by the Turkish Embassy (our letter of the 30th November*), and we are inclined to draw the conclusion that those of the heirs, who according to the Turks are still Turkish nationals and on whose behalf they have made representations, are in fact numbered amongst the heirs who have apparently surrendered their claims to the Canadian Company. If that were in fact so, our hands would be greatly strengthened. It seems more than likely that the heirs who are represented by the Canadian Company have assigned their

* No. ~~38171/34 [No. 18]~~. 18 † No. ~~38171/34 [No. 1]~~. 8

claims i.e. have parted with the ownership of them, to the Company. According to the letter of 19th May, 1934 from Messrs. Bischoff, Cox, Bischoff and Thompson, the heirs had received shares and debentures of the Company, and as they are supposed to be penniless it is reasonable to infer that the only sufficient consideration which they could have given in return for receiving those shares must have been a surrender of their claims. We may therefore hope that, even if there are any heirs who are, and have all along been, Turkish nationals, without ever losing their Turkish nationality, and whom the Turkish Government would therefore be entitled to support, these heirs have all surrendered their claims to the Consolidated Eastern Corporation Limited. If such should be the case and if the Turkish Government were to take up the claim really seriously, we could reply that the matter was one entirely between His Majesty's Government and a British (Canadian) company, and that we could not admit the right of any foreign Government to make an international claim on behalf of such a company.

3. The question therefore arises whether there is any way in which we can find out definitely what the exact position is, and it is in this connexion that we hope you may be able to help us. It has occurred to us that it might be possible for you to ask the High Commissioner at Ottawa to ascertain, either by enquiry from the Canadian Government or by personal inspection of the Register, who exactly are the shareholders of the Consolidated Eastern Corporation Limited. We imagine that under Canadian law a registered list of shareholders must exist. It would be worth while finding out not only who are the *present* shareholders, but also who were the *original* shareholders when the company was constituted, for it may be that certain of the heirs have sold their shares to other persons and so do not now figure on the list of shareholders. What we should like to obtain is a complete list of the heirs who, either at the time when the company was formed, or at any time since, have surrendered their claims to the company in return for shares.

4. If we succeeded in securing a complete list of the heirs who had thus parted with their claims to the company, and if then the Turkish Government were to take up the claim seriously, we could ask them for a list of the persons on whose behalf they were acting, and if, as we should hope, this list when furnished were to contain the names of persons all of whom were known to have surrendered their claims to the company, we should be able to answer the Turkish Government in the manner indicated in paragraph 2 above.

5. We shall be most grateful if you will look into the matter in the light of what I have said, and let us know whether you consider it feasible to take action on the lines which we have in mind.

Yours, &c.,

A. K. HELM.

G. E. B. Shannon, Esq.

79071/35 [No. 9]. No. 28. PROOF.

HIS MAJESTY'S REPRESENTATIVE, ANGORA,

to

THE SECRETARY OF STATE FOR FOREIGN AFFAIRS.

(Copy received in Colonial Office, 30th January, 1935.)

(No. 28.)

SIR, British Embassy, Angora, 15th January, 1935.

In your despatch No. 473 of the 28th November, 1934*, regarding the claims of the heirs of ex-Sultan Abdul Hamid, you ask whether there are any heirs who (*a*) have not assigned their claims to the Canadian Eastern Corporation Limited, and also (*b*) still are, and continuously have been Turkish nationals throughout the existence of the claim.

2. I have been unable to obtain locally any information which would enable me to give a definite reply to these two queries. But, in a general way, the assertion of Messrs. Bischoff, Coxe, Bischoff and Thompson in paragraph 3 of their letter of the 9th May, 1934, to you (enclosed in your despatch No. 247 of the 19th June, 1934†, to me) that the majority of the heirs made over to the company their rights, would imply that some heirs had not followed their example. I have, however, found some information in the files of the action brought by the heirs of Abdul Hamid against His Majesty's Government before the Anglo-Turkish Mixed Arbitral Tribunal in 1928, 1929 and 1930 which is relevant to the points at issue, and will no doubt be of interest to you.

3. It is clear from the papers in these files that the legally recognized heirs of Abdul Hamid were the following:—

Princes Mohammed Selim, Abdulkader, Ahmed, Burhaneddin, Abdurrahim, Nureddin, Abid.

Princesses Zekieh, Naileh, Naimeh, Shadieh, Ayesheb, Refia.

Widows Bedr-i-Felek, Emsal-i-Nur, Mushfika, Sazikiar, Peyvesteh, Saliha Nadjieh, Fatma (since deceased), Behidjeh.

(I retain the unreformed spelling of these names.)

4. The legal recognition of the above-named persons as heirs was effected by a judgment given on the 9th Rebi-ul-evel, 1338 (about December, 1919) by the Kassam of the Ser'i Court of Constantinople (the proper official of a Moslem religious court dealing with successions to estates). Copies of this judgment were produced on several occasions during the hearing of the claim of the heirs by the Anglo-Turkish Mixed Arbitral Tribunal and the authenticity of the list of heirs defined in the judgment was never challenged. It may therefore be taken for granted that no other persons than those mentioned in the list can legally claim to be heirs of Abdul Hamid.

5. Coming to the nationality of the heirs, there is no doubt that the princes and princesses mentioned in the list were deprived of their Turkish nationality by the terms of law No. 431 of the 3rd March, 1924. In a letter written on the 3rd April, 1930‡, to the Treasury Solicitor by Mr. Owen Wells, British Agent, Anglo-Turkish Mixed Arbitral Tribunal, a description is given of a statement read to the Franco-Turkish Mixed Arbitral Tribunal (then hearing the claims of the heirs against the French Government) by the Turkish Agent, acting on the instructions of his Government. In this statement, the Turkish Agent confirmed the loss of Turkish nationality by the Princes and Princesses, but added that the widows of the ex-Sultan retained their Turkish nationality. This declaration is quoted in the judgment given by the Franco-Turkish Mixed Arbitral Tribunal in April, 1930, where it is mentioned that the Turkish Agent claimed that not only the widows of the ex-Sultan, but also the widows of one ex-prince, and the widower of one ex-princess had retained their Turkish nationality. The Tribunal adopted this interpretation of law No. 431.

6. In a confidential memorandum of the 14th December, 1929, prepared by the British Agent, Anglo-Turkish Mixed Arbitral Tribunal, for the use of the Treasury Solicitor, the following passage occurs:—

> "The position of the widows is much stronger. . . . The enquiries made by me locally confirm that some, if not all of the wives of the late Sultan are still residing in Turkey, and that they have retained their nationality. Therefore, I am afraid it will be rather difficult to answer the claimants' contention on this point."

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* No. ~~38171/34~~ [No. 18]. 18 † No. ~~38171/34~~ [No. 1]. 8

‡ Enclosure 2 in No. 21 in Middle East No. 23.

7. Two of the widows, Bedr-i-Felek and Mushfika are expressly mentioned as being Turkish citizens in a decision given by the Turkish Government on the 2nd August, 1931, and quoted by M. Nicolas Politis on pages 57 and 58 of his " opinion " on the rights of the heirs of Abdul Hamid. A copy of this " opinion " was enclosed in your despatch No. 247 of the 19th June, 1934*, to me. These two widows, along with two others, Saliha Nadjieh and Peyveste, figure among the claimants in the case brought against His Majesty's Government before the Anglo-Turkish Mixed Arbitral Tribunal.

I have, &c.,

PERCY LORAINE.

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* No. 38171/34 [No. 1].

79071/35 [No. 5]. No. 29 PROOF.

PALESTINE.

THE SECRETARY OF STATE

to

THE HIGH COMMISSIONER.

(Confidential.)

SIR, Downing Street, 5th February, 1935.

With reference to my telegram No. 23 of the 22nd of January, 1935*, regarding the petition filed in the District Court of Jaffa on behalf of His Highness Prince Mohamed Selim, I have the honour to transmit to you a copy of a letter on this subject from the Foreign Office† and to request that a copy of the petitioner's statement of claim may be forwarded to me as soon as it has been received.

2. As regards paragraph 4 of the letter from the Foreign Office, I enclose a note regarding the relevant documents and two copies of Middle East Print No. 23 referred to in the note. I also enclose for use in connexion with the case, one further copy of M. Politis' Opinion.

3. In paragraph 2 of the letter from the Foreign Office a doubt is expressed whether the Palestine Crown Actions Ordinance No. 30 of 1926 does in fact give the High Commissioner for Palestine discretion to refuse his fiat in the case of a petition, such as that of Prince Mohamed Selim, since the claim is of the kind contemplated in Section 3(i) (*c*) of the Ordinance. In this connexion I would observe that Section 3(2) of the Ordinance would appear to remove any doubt on this point.

I have, &c.,

P. CUNLIFFE-LISTER.

Enclosure in No. 29

NOTE.

1. Mémoire submitted on behalf of the Heirs.	Sent to Palestine with despatch No. 514 of 20th June, 1928‡. See also pages 2–12 of Middle East Print No. 23.
2. Mémoire spéciale submitted on behalf of His Majesty's Government.	Sent to Palestine with despatch No. 1091 of 31st December, 1928§.
3. Réplique submitted on behalf of the Heirs.	Annexed to this note.§§
4. Contre Réplique on behalf of His Majesty's Government.	Sent to Palestine with despatch No. 1058 of 30th December, 1929‖.
5. Procédure Probatoire.	Sent to Palestine with despatch No. 574 of 21st July, 1930¶.
6. Note de Plaidoirie.	See pages 98–100 of Middle East Print No. 23.
7. Notes d'Audience.	Sent to Palestine with despatch No. 170 of 3rd March, 1931**.
8. Petition of intervention submitted on behalf of the Ottoman Imperial Estates Incorporated, etc.	See pages 86 and 87 of Middle East Print No. 23.
9. Reply submitted on behalf of His Majesty's Government.	See pages 97 and 98 of Middle East Print No. 23.
10. Judgment of Mixed Arbitral Tribunal regarding the intervention.	Copy annexed to this note.
11. Judgment of Anglo-Turkish Mixed Arbitral Tribunal regarding claim of Heirs.	Sent to Palestine with despatch No. 126 of 11th February, 1931††. See also pages 104–107 of Middle East Print No. 23.
12. Judgment of Franco-Turkish Mixed Arbitral Tribunal.	Sent to Palestine with despatch No. 574 of 21st July, 1930¶. See also pages 89–92 of Middle East Print No. 23.
13. Judgment of Italo-Turkish Mixed Arbitral Tribunal.	No copy available. Was in practically same terms as judgment of Anglo-Turkish M.A.T. (see 11 above).
14. M. Politis' Opinion.	Sent to Palestine with confidential despatch of 1st January, 1935‡‡.

* No. ~~79071/35 [No. 4]~~. 25 † No. ~~79071/35 [No. 3]~~. 27 ‡ No. ~~59071/28, Part I~~ [No. 28]. in Middle East No. 23.
§ No. 59071/28, Part II [No. 86]: not printed. ‖ No. 69071/29 [No. 30]: not printed.
¶ No. 79071/30, Part I [No. 32]: not printed. ** No. 79071/30, Part II [No. 66]: not printed.
†† No. 79071/30, Part I [No. 62]: not printed. ‡‡ No. 38171/34, Part 2 [No. 20]. No. 21.

§§ Not reproduced

Abdul Hamid—(C.21839/69). 12.

TRIBUNAL ARBITRAL TURCO-ANGLAIS.

AFFAIRE: NO. 8. HÉRITIERS DU SULTAN ABDUL HAMID CONTRE LE GOUVERNEMENT BRITANNIQUE

Le Tribunal arbitral TURCO-ANGLAIS, composé de MM. K. HAMMERICH, président, MEMDOUH BEY, arbitre turc, W. H. HILL, arbitre britannique, assisté de son greffier, M. P. GRANDCHAMP, siégeant à Constantinople,

Vu le mémoire présenté par les Héritiers de feu le Sultan Abdul Hamid II concluant à faire condamner de Gouvernement Britannique à la restitution de certains biens immobiliers,

Vu la requête en intervention présentée le 29 mars 1930 par les sociétés suivantes:

1°) The Ottoman Imperial Estates Incorporated,
2°) Abdul Hamid Landed Estates, Limited,
3°) Abdul Hamid Oil Concessions, Limited,
4°) Abdul Hamid Mines, Limited,
5°) Abdul Hamid British Trust, Limited,

Vu l'opposition formée par Monsieur l'Agent du Gouvernement Britannique,

Attendu que les intervenants affirment avoir passé avec certains des héritiers de feu le Sultan Abdul Hamid une série de contrats visant le transfert aux intervenants des droits de propriété que forment l'object de l'instance introduite par ces héritiers contre le Gouvernement Britannique; qu'ils exposent qu'aucune transcription au cadastre n'ayant été opérée en leur faveur, les dits héritiers figurent toujours, en conséquence, sur les registres du cadastre, comme propriétaires et bénéficiaire des biens en litige; mais que néanmoins ces biens sont juridiquement acquis aux intervenants; qu'ils demandent donc au Tribunal d'admettre leur requête et de donner acte aux parties des droits que, d'aprés ce qui précéde, reviennent aux intervenants,

Attendu qu'il est de principe que l'intervention ne saurait apporter du retard à la décision de l'instance principale, ce que l'article 28 du Réglement de procédure sanctionne expressement,

Attendu que l'instance principale a été introduite le 30 juin, 1926 et que le clôture de la procédure écrite en a été prononcée le 18 mars, 1930; qu'ils convient de relever que durant cette période de presque quatre ans, aucune démarche n'a été faite par les intervenants auprès de ce Tribunal, mais qu'ils ont remis la poursuite de leurs intérêts jusqu'au moment où la procédure écrite était déjà déclarée close,

Attendu que le Tribunal ne saurait, sous aucune forme que ce soit, se prononcer à l'égard des droits contractuels prétendus des intervenants sans être suffisamment édifié sur la nature et la portée des engagements pris par chacun des contractants et les rapports que ces engagements peuvent avoir avec les revendications formulées contre le Gouvernement Britannique par les héritiers eux-mêmes; qu'une telle instruction ne pouvant se parfaire à moins de rouvrir la procédure écrite et d'autoriser tous les intéressés, les parties principales aussi bien que les intervenants, à présenter les observations réglementaires, à savoir: mémoire, contre-mémoire, réplique et contre-réplique, il est indiscutable que l'intervention aura pour effet de retarder la décision de l'affaire principale qui se trouve déjà en état d'etre jugée et dans laquelle les débats ont été fixés au 18 octobre, 1930; qu'il y a lieu de faire observer qu'alors même que les intéressés feraient toute diligence en vue d'accélérer le cours de la procédure que comporterait l'intervention, celle-ci ne pourrait cependant pas, d'après les délais tels qu'ils ont été prévus par le Réglement, s'achever jusqu'à la date précitée, étant donné notamment le fait que toutes les opérations seront suspendues durant les vacances judiciaires,

Par ces motifs

Déclare inadmissible l'intervention susvisée.

Constantinople, le 28 avril, 1930.

l'Arbitre Turc,	Le Président,	l'Arbitre Britannique,
MEMDOUH.	K. HAMMERICH.	W. H. HILL.

Pour copie conforme

Le Président. Le Greffier.

79071/35 [No. 10]. No. 30. PROOF.

PALESTINE.

THE SECRETARY OF STATE

to

THE HIGH COMMISSIONER.

(Confidential (2).)

SIR, Downing Street, 8th March, 1935.

With reference to my confidential despatch of the 5th of February*, I have the honour to transmit to you herewith copies of documents† relative to the claims of the heirs of the ex-Sultan Abdul Hamid II of Turkey.

2. A copy of the note of the interview between the Assistant Treasury Solicitor and Mr. Inchbald on the 21st of August, 1934‡, referred to in the note of the interview on the 18th December§ was enclosed in my confidential despatch of the 1st of January||.

I have, &c.,

P. CUNLIFFE-LISTER.

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20 * No. ~~79071/35 [No. 5]~~. 21 ↗ 26

† Enclosure in No. ~~38171/34 [No. 24]~~, No. ~~79071/35 [No. 8]~~, No. ~~79071/35 [No. 9]~~. 28

‡ Enclosure in No. ~~38171/34 [No. 12]~~. 14 § Enclosure in No. ~~38171/34 [No. 24]~~. 20

|| No. ~~38171/34 [No. 20]~~. 21

Abdul Hamid—(C.21839/72). 12.

79071/35 [No. 12]. No. 31. PROOF.

PALESTINE.

THE HIGH COMMISSIONER

to

THE SECRETARY OF STATE.

(Received 11th March, 1935.)

[*Answered by No.* ~~79071/35 [No. 21].~~] 39

(Confidential " B ".)

SIR, Jerusalem, 1st March, 1935.

I have the honour to refer to the correspondence ending with your confidential despatch of the 5th February, 1935*, regarding the petition which has been filed in the District Court of Jaffa on behalf of His Highness Prince Mohamed Selim, a son of the late Sultan Abdul Hamid II of Turkey, in respect of certain lands and properties situated near the village of Moharraka in Palestine, and to inform you that I have granted my fiat on the petition and will forward to you a copy of the statement of claim as soon as that is filed by the petitioner in Court.

2. The contents of the letter from the Foreign Office which formed an enclosure in your despatch have been noted. I ought to inform you, however, that there is reason to believe that the claimants will concentrate in Palestine on an endeavour to prove that the Irades of 1908 and 1909, by which the private property of Abdul Hamid was transferred to the Turkish State, were invalid because they had never been approved by the Council of Ministers and Parliament. The High Court here has given a decision to the effect that a provisional law which never received Parliamentary approval in conformity with Ottoman Law was not law in Palestine as it was not validated by Article 46 of the Palestine Order in Council, 1922; and it will most probably be argued that the Irades may be assimilated to provisional laws which were not approved by Parliament.

A copy of the High Court's decision is enclosed.

My legal advisers do not think that the argument is sound or that the decision is a correct one, but the District Court may hold itself bound by it and the matter will have to be argued in the Court of Appeal or possibly before the Privy Council.

3. I enclose, for your information, a translation of the text of the Turkish Ministerial Decree (No. 104) issued on the 28th Karun Awal, 1914, by Order of the Sultan and with the consent of Parliament, to the effect that all the properties in possession of the Treasury or any Government Department which derived to Government by transfer or in any other way and which were not yet so registered should be registered in the name of the Government Treasury without fee and title deeds issued accordingly. This decree was never executed and the land at present claimed is still registered in the Land Registers in the name of the late Sultan Abdul Hamid II; but the decree will be of assistance in proving that the Irades of 1908 and 1909 were regarded as valid by the Turkish Government.

4. I shall be glad to learn whether there is any objection to the raising of technical objections to the claim, for example, the objection of limitation. In the case of the present claimant who, I understand, is the eldest son of Abdul Hamid, it may perhaps be possible to argue that the right to claim was prescribed in 1918, that is ten years from the issue of the 1908 Irade.

I have, &c.,

ARTHUR WAUCHOPE,

High Commissioner for Palestine.

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* No. ~~79071/35 [No. 5]~~. 29.

Enclosure 1 in No. 31.

High Court No. 71/31.

IN THE SUPREME COURT SITTING AS A HIGH COURT OF JUSTICE.

BEFORE: The Chief Justice and Mr. Justice Khayat.

IN THE APPLICATION OF:

George Aiyub, Petitioner,

v.

The Mayor of Beit Jala, Respondent.

Application for an Order to issue to the Respondent directing him to show cause why his order dated the 18th November, 1931, should not be set aside.

JUDGMENT.

The Ottoman Law of Primary Schools of 23rd September, 1329, was only a provisional law which never received Parliamentary approval in conformity with the Ottoman Law: and in consequence is not validated by Section 46 of the Palestine Order-in-Council, 1922.

The refusal of the licence by the Municipality according to the Mayor's letter of the 18th November, 1931, was therefore not based upon legal grounds and the Rule must be made absolute with costs to include £P.2. advocate's fees.

DELIVERED this 18th day of May, 1932.

MICHAEL J. F. MACDONNELL.
Chief Justice.

Enclosure 2 in No. 31

(Translation from Turkish)

Ministry of the Daftar
Khakany.
No. 104.

This is the Law.

First Section.

All the properties whether Emlak or lands which derived to the Government Treasury or any other Government Department by way of transfer or which by any other way other form is in possession of the Government or any Department and which until the date of this law are not recorded in the name of the Treasury by official title deeds shall be registered gratis without fee in the name of the Treasury either by form of Restoration or New Registration and title deed shall be issued.

Second Section.

This law shall come into force from the date of its publication.

Third Section.

The Minister of Finance is ordered to execute this law.

The Council of Representatives and Parliament having accepted it I order it to be added to the laws of my Government.

MOHD. RASHAD,
Prime Minister.

MOHD. SAID,
Acting Minister of Finance Falaat.

To the Mamour of the Daftar,
Hakany of Jerusalem.

The law dealing with the registration of immovable properties in the name of the Treasury and the issuing of title deeds gratis and without fee is herewith sent for action in accordance with its terms. The attached printed copies should be circulated to the officers of the other Tabou branches for the general knowledge.

17, Rabia El Awal, 1331.
8th February, 1331.

Minister of Daftar Khakany.
Adel.

79071/35 [No. 15]. No. 32. PROOF.

THE SECRETARY OF STATE FOR FOREIGN AFFAIRS

to

THE TURKISH AMBASSADOR.

(Copy received in Colonial Office, 22nd March, 1935.)

YOUR EXCELLENCY, Foreign Office, S.W.1, 21st March, 1935.

In the memorandum which Sedat Zeki Bey left at the Foreign Office on the 9th November last, it was stated that you had been instructed by the Turkish Government to support the claims of those heirs of the late Sultan Abdul Hamid who are Turkish citizens for the restoration of various properties situated in the territories detached from Turkey which came under British control in virtue of the Lausanne Peace Settlement of 1923. The memorandum added that you had been informed that this claim had been submitted to the Foreign Office by the legal representatives of the said heirs of Turkish nationality.

2. I have the honour to inform Your Excellency in reply that His Majesty's Government in the United Kingdom have no cognisance of any claim presented to them on behalf of Turkish nationals, heirs of the late Sultan Abdul Hamid. The only claim now before them in respect of the properties of the late Sultan is one on behalf of a British (Canadian) company to which the interests claimed in these properties by a majority of the heirs appear to have been transferred.

I have, &c.,

L. BAGGALLAY.
(For the Secretary of State.)

Abdul Hamid—(C.21839/75). 12.

79071/35 [No. 16]. No. 33 PROOF.

FOREIGN OFFICE

to

TREASURY SOLICITOR.

(Copy received in Colonial Office, 4th April, 1935.)

SIR, Foreign Office, S.W.1, 2nd April, 1935.

As you are aware from the enclosures in Foreign Office letter of the 24th January*, in regard to the claims of the heirs of the late Sultan Abdul Hamid, it was suggested semi-officially to the Dominions Office that enquiries might be made of the High Commissioner for the United Kingdom at Ottawa with a view to ascertaining the names of the shareholders of the Consolidated Eastern Corporation Limited. The object of this enquiry was to establish whether in fact the claims of the heirs of the late Sultan have been legally vested in the Consolidated Eastern Corporation, and, if so, exactly what claims have been ceded to the Corporation.

2. I am now directed by Secretary Sir John Simon to transmit to you the accompanying copy of a semi-official letter from the Office of the High Commissioner explaining that the Consolidated Eastern Corporation is registered under the Dominion Companies legislation, which does not provide for a registered list of shareholders, and that a list of the share and debenture-holders could probably only be obtained as a result of enquiry of the Company itself. The Secretary of State considers that no useful purpose would be served by making such an enquiry at the present time, but he presumes that, if the Consolidated Eastern Corporation should pursue its claim against His Majesty's Government through you, you would find occasion to request it to furnish full information regarding the claims which have been ceded to it.

3. In this connexion I am to state that in the course of a recent private conversation with a member of this department, the Counsellor of the Turkish Embassy referred to the Secretary of State's note of the 21st March to the Turkish Ambassador (a copy of which was enclosed in Foreign Office letter of the same date†), and contended that the statement in that note seemed to amount to an argument that a solicitor was not entitled to represent the interests of his clients. It was pointed out to Sedat Zeki Bey that this was certainly not the case, since the information supplied to His Majesty's Government by the solicitors of the Consolidated Eastern Corporation was to the effect that the Corporation had secured the possession of the rights of some of the heirs to the properties, etc., constituting the succession of the late Sultan. Sedat Zeki Bey did not deny this and in fact stated that what the claimants had obtained were debenture shares of the Corporation from which they would only reap benefit in the event of the Corporation's claim being successful. The matter then dropped, but while in view of the circumstances in which it was given no use can be made of Sedat Zeki Bey's statement, the conversation is of some interest as showing that the claimants on whose behalf the Turkish Ambassador has recently made representations are in fact associated with the Consolidated Eastern Corporation Limited.

I am, &c.,

Enclosure in No. 33

(Confidential.) Office of the High Commissioner for the United Kingdom,

MY DEAR WISEMAN, Earnscliffe, Ottawa, 5th March, 1935.

In reply to your letter of the 15th February‡, I write to say that I have made discreet enquiries of the Companies Branch of the Secretary of State's Department here with regard to the Consolidated Eastern Corporation. The Branch tell me that the Corporation is registered under the Dominion Companies legislation, which does not provide for a registered list of shareholders. The company was incorporated on the 29th January, 1932, with offices at 105, St. James Street, Montreal. The President is Mr. William B. Stewart of London, England, the Manager C. W. Ismay of Montreal and the Directors are Prince Burhaneddin and Paul Christ, both of whom gave their address as c/o The Royal Trust Company, Kinnaird House, Pall Mall, London, England. The capital of the company is $5 millions of ordinary shares of $1 each, fully paid. There is also an issue of $2½ millions of 8 per cent debentures.

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* No. ~~79071/35 [No. 8]~~. 26 † No. ~~79071~~/35 [No. ~~15~~]. 32 ‡ D.O. No. 6593/22. not printed

Whilst I am afraid that none of this information is of much use to you, it seems desirable to pass it on as it is all the information issued by the Companies Branch about the Corporation. I was told that the only way in which a list of shareholders and debenture-holders could be obtained would be by writing to the Company itself, and that such a request would only be likely to receive a favourable answer if it came from a shareholder.

Yours, &c.,

NORMAN E. ARCHER.

R. A. Wiseman, Esq.,
Dominions Office,
London.

79071/35 [Nos. 13 and 14]. No. 34. PROOF.

COLONIAL OFFICE

to

1. FOREIGN OFFICE.

2. THE TREASURY SOLICITOR.

[*Answered by ~~No. 79071/35~~* [*Nos. 37 and 38*].]

SIR, Downing Street, 9th April, 1935.

With reference to the letter from this Department of the 9th of February* I am directed by Secretary Sir Philip Cunliffe-Lister to transmit to you [*To 1*: to be laid before Secretary Sir John Simon] a copy of a despatch from the High Commissioner for Palestine† regarding the petition which has been filed in the District Court of Jaffa on behalf of His Highness Prince Mohamed Selim, a son of the late Sultan Abdul Hamid II of Turkey, in respect of certain lands and properties in Palestine, and to request that he may be furnished with [*To 1*: Sir John Simon's] [*To 2*: your] observations on the despatch, and particularly on the points raised in paragraph 4.

I am, &c.,

H. F. DOWNIE.

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* No. 79071/35 [Nos. 6 and 7]. not printed † No. ~~79071/35 [No. 12]~~. 31

Abdul Hamid—(C.21839/74). 12.

79071/35 [No. 18]. No. 35 PROOF.

TREASURY SOLICITOR

to

COLONIAL OFFICE.

SIR, Storey's Gate, S.W.1, 11th April, 1935.

In reply to your letter of the 9th instant*, with further reference to the petition which has been filed in the District Court of Jaffa on behalf of a son of the late Sultan Abdul Hamid II of Turkey in respect of certain lands and property in Palestine, I have to state for the information of Secretary Sir Philip Cunliffe-Lister that I agree with the opinion of the legal advisers to which reference is made in the second paragraph of the copy despatch from the High Commissioner for Palestine† enclosed with your letter. The validity of the Iradés is discussed at pages 13 to 20 of the memorandum enclosed in my letter to you of the 3rd December last‡.

The question raised in paragraph 4 of the High Commissioner's despatch is perhaps one more for consideration by the Foreign Office than by me. It would, however, in my opinion, be undesirable to raise to the claim objections which may properly be described as purely of a technical character, but in case of need I think the defence of limitation might be relied on if it can be shown that the claimant had in fact an opportunity of pursuing his claim before the appropriate Court during a reasonable time, and that he neglected so to do. As I understand the principles of international law concerned, a State cannot be heard to allege that the claimant, its subject, has been denied justice unless it can show that the claimant has exhausted in vain the appropriate remedies open to him under the municipal law. The claimant must have appealed to a higher Court where that course was open to him. It is well recognized that even proper claims must be raised with due diligence, and if a claimant has failed to pursue his remedy within a reasonable and proper period of limitation, or has allowed the time for appeal to run out, the claim is barred and cannot support subsequent diplomatic action. It is believed that this position was maintained by His Majesty's delegates to the Conference called at the Hague to consider the codification of the principles of International Law relating to the responsibilities of States. On this point reference may perhaps be had to some such work as Borchard on *The Diplomatic Protection of Citizens Abroad*, Sections 384 et seq.

I am, &c.,

A. W. BROWN.

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* No. ~~79071/35 [No. 14]~~. 34 † No. 79071/35 [No. 12]. 31 ‡ No. ~~38171/34 [No. 19]~~. 19

Abdul Hamid—(C.21839/78). 12.

79071/35 [No. 17]. No. 36. PROOF.

TREASURY SOLICITOR

to

FOREIGN OFFICE.

(Copy received in Colonial Office, 12th April, 1935.)

SIR, Storey's Gate, St. James's Park, S.W.1, 4th April, 1935.

I have to thank you for your letter of the 2nd instant* enclosing a copy of a semi-official letter from the Office of the High Commissioner for the United Kingdom at Ottawa, dealing with the constitution of the company which has been formed in Canada for the prosecution of the claims of the heirs of the late Sultan Abdul Hamid, and to state, for the information of the Secretary of State for Foreign Affairs, that I shall bear in mind the suggestion that if and when a convenient occasion presents itself, I should request the company to furnish full information regarding the claims which have been ceded to it.

I have noted with interest the information contained in your letter under reply of the recent private conversation with the Counsellor to the Turkish Embassy.

I am, &c.,

A. W. BROWN.

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* No. ~~79071/35 [No. 16]~~. 33

79071/35 [No. 20]. No. 37 PROOF.

FOREIGN OFFICE

to

COLONIAL OFFICE.

SIR, Foreign Office, S.W.1, 10th May, 1935.

I am directed by Secretary Sir John Simon to invite a reference to your letter of the 9th April*, enclosing a copy of a despatch from the High Commissioner for Palestine†, regarding the petition filed in the District Court of Jaffa on behalf of Prince Mohamed Selim, one of the heirs of the late Sultan Abdul Hamid.

2. Sir John Simon notes from paragraph 2 of that despatch that Sir Arthur Wauchope considers it possible that the Palestinian Courts may hold the Turkish Irades of 1908 and 1909, in virtue of which the private property of the late Sultan was transferred to the Turkish State, to be invalid on the ground that they have never been approved by the Council of Ministers and Parliament. He is advised that such a view might be incorrect as a matter of interpretation of Turkish law, and in this connexion I am to request that the attention of Secretary Sir Philip Cunliffe-Lister may be drawn to the judgment pronounced on the 17th March, 1934, by the Permanent Court of International Justice in the Lighthouses dispute between the French and Greek Governments. A copy of this judgment, which contains some useful information on Turkish law, was sent unofficially to Mr. Bushe on the 9th April. Not having examined the matter in detail, Sir John Simon offers no opinion on the question whether or not that decision of the Permanent Court covers the present case.

3. In Foreign Office letter of the 3rd January‡ the view was expressed that, whether or not the Irades were valid in Turkish law, they were made effective in virtue of the second paragraph of Article 60 of the Treaty of Lausanne. In this connexion, however, there arises the question of the extent to which Article 60 of the Treaty of Lausanne can be relied upon before a Palestinian Court and whether it can be contended that the Article is not part of the municipal law of Palestine. This is a point which Sir Philip Cunliffe-Lister may wish to examine in consultation with the High Commissioner for Palestine and in the event of it being established that Article 60 of the Treaty of Lausanne has not been made part of the laws of Palestine, he may further wish to consider whether it would not be desirable to make it so.

4. As regards the possibility of raising in this case a defence based on the expiry of the period of limitation, to which reference is made in paragraph 4 of Sir Arthur Wauchope's despatch, Sir John Simon has had before him your letter of the 17th April§ enclosing a copy of a letter of the 11th April from the Treasury Solicitor||. He considers that the Government of Palestine need not be dissuaded from pleading the Statute of Limitations as a bar to the claim of Prince Mohamed Selim in the Palestinian Courts. He is advised that it is a good defence against a diplomatic claim brought in respect of an injury done to an individual to show that that individual had legal remedies open to him in the local Courts of which he could have availed himself: the fact that at the moment of bringing the diplomatic claim these legal remedies are no longer open to him by reason of the operation of a Statute of Limitations is not a good answer to this defence. The point is of frequent occurrence in connexion with appeals from decisions of Courts of first instance. In almost all countries the time within which an appeal can be brought is limited, and if the individual concerned could have brought an appeal within a certain time after the judgment of the first Court was given against him, but fails to do so, then he has failed to exhaust his legal remedies.

5. A copy of this letter is being sent to the Treasury Solicitor.

I am, &c.,

G. W. RENDEL.

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* No. ~~79071/35 [No. 13]~~. 34 † No. ~~79071/35 [No. 12]~~. 31 ‡ No ~~79071/35 [No. 2]~~. 22

§ No. 79071/35 [No. 19]. Not printed || No. 79071/35 [No. 18]. 35

79071/35 [No. 20 A]. No. 38. PROOF.

MEMORANDUM.

The Sultan Abdul Hamid II of Turkey owned privately certain land and concessions in Palestine, 'Iraq, and elsewhere. In September, 1908, the Sultan issued an Irade which in some way assigned his private properties to the State. The Sultan was deposed on the 27th of April, 1909, and on the 2nd of May, 1909 a second Irade was issued by his successor purporting to have the same effect as the first. The Sultan died in 1918.

In negotiating the Treaty of Lausanne, the question arose whether the States which succeeded to the Ottoman Empire were to have the above properties, which it was alleged on the one side were still the private property of the heirs of the Sultan. This question was " settled " by Article 60 of the Treaty. In 1922 the competent tribunal made a declaration as to who were the heirs of the Sultan. These were seven sons, six daughters, and eight widows whose names are set out on page 2 of M. Politis' opinion. About 1926 these heirs made a claim to the property before the Mixed Arbitral Tribunal constituted under the Treaty of Lausanne, but the Tribunal decided in 1930 that they had no competence to deal with the claim.

In May, 1934, the Foreign Office received a letter from Messrs. Bischoffs informing them that in 1932 Consolidated Eastern Corporation Limited was incorporated in Canada, and that to this company the majority of the heirs had made over their rights in the succession. It may also be mentioned that in June, 1934, a letter came from an American lawyer disclosing that at least four companies had been formed in England and two in America which also had received assignments from the heirs of their interests: stating that he had been appointed receiver of the American companies: and that consequently Consolidated Eastern Corporation Limited had no authority to deal with this matter. Bischoffs wished to settle the matter by some form of agreement or international arbitration, and the Turkish Embassy has taken an interest in it, but we have always taken the line that if the heirs wish to make a claim, they must bring an action in the proper civil court.

On the 15th of July, 1934, a petition was lodged in the District Court of Jaffa on behalf of one of the heirs, Mohammed Selim (who is one of the heirs included in the above-mentioned declaration, but whether or not he is one who has assigned his rights to any one of the above companies we do not know) against the Government of Palestine claiming his share of the property of the late Sultan in Palestine. After correspondence between ourselves, the Foreign Office, and the Treasury, the High Commissioner was directed to issue his fiat in January, 1935. So far as we have been informed, there has been no further step in the action.

The dispute turns on the meaning of the second paragraph of Article 60 of the Treaty of Lausanne. It appears that it will be fought on the footing that the land in question was the subject matter of the Irades, and that the crux is, what is the meaning of the word " subrogated ". The case of the heirs is set out in M. Politis' opinion, and is shortly that the Sultan had never divested himself of the ownership of the land: he had merely attempted to mortgage the income to the State: that " subrogated " means that the succession States take merely such rights as the Turkish State had in the property: and that therefore the Palestine Government has no right to the land. Our case is best put in the memorandum by the Treasury Solicitor* and in the Foreign Office letter of 3rd January, 1934†.

The latest despatch‡ from Palestine raises two points which now fall to be dealt with:

A. In 1932 the Court of Appeal in Palestine held (in a judgment consisting of two sentences) that an Ottoman Provisional Law (that is, a Decree issued by a Minister and approved by the Sultan but not ratified by the Turkish Parliament) had no force as law under the Ottoman Constitution, and that therefore it has no force to-day under Section 46 of the Palestine Order in Council. The High Commissioner thinks it will be argued by the heirs that an Imperial Irade stands on the same footing, and that therefore the Irades of 1908 and 1909 were inoperative to transfer the property to the State. The answer to this seems to be as follows:—

(1) Our contention is that we are not concerned with the validity or otherwise of the Irades. The matter was settled by Article 60 of the Treaty (see the memorandum of the Treasury Solicitor).

(2) In any case, the judgment of the Court of Appeal is wrong. In 1934, the Permanent Court of International Justice delivered judgment in the

* No. 79071/35 [No. 19] not printed. † No. ~~79071/35 [No. 2]~~. 22 ‡ No. ~~79071/35 [No. 12]~~. 31

Lighthouses case between France and Greece which involved this point, see particularly page 8 (last paragraph) and pages 19 (last paragraph) to 24 of the judgment. Its effect is, that if certain conditions are complied with (contained in Article 36 of the Ottoman Constitution, which is set out on page 21 of the judgment) a Provisional Law is a valid law.

(3) The legal effect of an Irade is a different question. The Irade of 1908 appears to have been not so much a law as a grant. The effect of the Irades in this case is one of great difficulty which can be determined only on examination of Turkish law. M. Politis goes into that on page 31 onwards, and the memorandum of the Treasury Solicitor deals with it on pages 13–20.

B. Palestine also asks whether there is any objection to their pleading in defence, technical matters such as limitation, as they say it appears that the right of the plaintiff in this case must have been prescribed in 1918, i.e., ten years after the Irade. The Treasury view on this question is in (18), and the Foreign Office view in (20) of this file. They have treated it as a matter of principle, but the Treasury suggest regard should be paid to the question whether the plaintiff really had a chance of bringing his action. I do not know whether this is a practicable course if taken seriously, as it involves considerations of questions relating to the circumstances of the heirs which we cannot possibly go into, here at any rate. In any case, if the heir was in fact unable to bring his action on account, for example, of absence from the country, time would not run against him as I understand the Ottoman law. On this question generally, however, I should have thought it creditable not to plead limitation in this case, having regard to the fact that there was a war in Palestine at the material time, that this very question of the land was considered and dealt with at the Treaty of Lausanne four years after 1918, and that the heirs have been putting forward their claims consistently since at any rate as early as 1926, and we have not yet raised this defence.

W. L. DALE.

Colonial Office,
27th May, 1935.

79071/35 [No. 21]. No. 39. PROOF.

PALESTINE.

THE SECRETARY OF STATE

to

THE HIGH COMMISSIONER.

(Confidential (2).)

SIR, Downing Street, 22nd June, 1935.

I have the honour to refer to your despatch confidential " B " of the 1st of March* regarding the petition which has been filed in the District Court of Jaffa on behalf of Prince Mohamed Selim, one of the heirs of the late Sultan Abdul Hamid.

2. I note from paragraph 2 of your despatch that the District Court may hold that the Turkish Irades of 1908 and 1909 are invalid on the ground that they have never been approved by the Council of Ministers and Parliament. I am advised that such a view might be incorrect as a matter of interpretation of Turkish law, and in this connexion, attention is invited to the Judgment pronounced on the 17th March, 1934, by the Permanent Court of International Justice in the Lighthouses dispute between the French and Greek Governments. I enclose a copy of this judgment† and would invite particular attention to page 8 (the last paragraph) and pages 19 (last paragraph) to 24.

3. In paragraph 4 of your despatch you enquire whether there is any objection to raising a defence based on the expiry of the period of limitation. In this respect I am advised as follows. It is a good defence against a diplomatic claim brought in respect of an injury done to an individual to show that that individual had legal remedies open to him in the local Courts of which he could have availed himself: the fact that at the moment of bringing the diplomatic claim these legal remedies are no longer open to him by reason of the operation of a Statute of Limitations is not a good answer to this defence. The point is of frequent occurrence in connexion with appeals from decisions of Courts of first instance. In almost all countries the time within which an appeal can be brought is limited, and if the individual concerned could have brought an appeal within a certain time after the judgment of the first court was given against him, but fails to do so, then he has failed to exhaust his legal remedies.

4. In these circumstances, therefore, I consider that the Government of Palestine need not be dissuaded from pleading the Statute of Limitations as a bar to the claim of Prince Mohamed Selim in the Palestinian Courts.

I have, &c.,
MALCOLM MACDONALD.

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* No. ~~79071/35 [No. 12]~~. 31 † Not reprinted.

Abdul Hamid—(C.21839/81). 12.

79071/35 [No. 22]. No. 40. PROOF.

COLONIAL OFFICE

to

FOREIGN OFFICE.

[*Answered by No.* .]

SIR, Downing Street, 24th June, 1935.

I am directed by Mr. Secretary MacDonald to refer to your letter of the 10th May* regarding the petition filed in the District Court of Jaffa on behalf of Prince Mohamed Selim, and to transmit to you, to be laid before Secretary Sir Samuel Hoare, a copy of a despatch† to the High Commissioner for Palestine on this subject.

2. As regards paragraph 3 of your letter, Article 60 of the Treaty of Lausanne was made part of the municipal law of Palestine by Ordinance No. 25 of 1926, a copy of which is enclosed herewith‡. A copy of Palestine Ordinance No. 28 of 1925 was enclosed in this Department's letter of the 28th January, 1926§.

3. A copy of this letter and the enclosures is being sent to the Treasury Solicitor.

I am, &c.,

O. G. R. WILLIAMS.

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* No. ~~79071/35 [No. 20]~~. 37 † No. ~~79071/35 [No. 21]~~. 39 ‡ Not reprinted.
§ No.2051/26, not printed.

Abdul Hamid—(C.21839/82). 12.

79071/35 [No. 25]. No. 41 PROOF.

TREASURY SOLICITOR

to

COLONIAL OFFICE.

The Treasury Solicitor presents his compliments to the Under-Secretary of State for the Colonies and with reference to previous correspondence in the matter of the claims of the Heirs of the Ex-Sultan Abdul Hamid II of Turkey forwards herewith for information a copy memorandum of a further interview with the Solicitor to the claimants.

Storey's Gate, S.W.1.
24th June, 1935.

Enclosure in No. 41

Claims of the Heirs of the Ex-Sultan Abdul Hamid.

Note of Interview on the 21st June, 1935, between Mr. Inchbald, solicitor for the claimants, and Dr. Brown, Assistant Treasury Solicitor.

1. Mr. Inchbald explained that the more these claims were investigated, the more convinced he and his clients are of their legal and also of their moral right, and that they now have behind them a promise of energetic assistance by the Turkish Government. It was felt, however, that His Majesty's Government might perhaps have modified their attitude towards the claims in some respect and, to avoid an open source of friction, might be prepared to agree to some kind of arbitral investigation with a view to a friendly settlement. He said that four or five of the heirs are and always were Turkish subjects, and that no point could be made by reason of the " assignment " of their claims, because the documents used had been carefully settled by Monsieur Politis with this possible difficulty in mind; the Turkish heirs had retained their legal title of claim and had only assigned to the company (in return for shares or debentures) the advantage of any benefits they the heirs might receive in respect of their claims.

2. Dr. Brown explained that, so far as he was aware, there had been no change —and there is no reason to expect any change—in the attitude of His Majesty's Government towards the claimants.

3. In the course of the general discussion it was suggested that if in respect of any properties as e.g., the ancient domains or the trust estates a legal claim could be shown to exist, it should properly be pressed against the Governments of the territories where the lands are situate; and that in negotiating a proper settlement of any such legal claims, it might be that Mr. Inchbald's British clients would be in a position to ask for the help of His Majesty's Government.

4. Mr. Inchbald again referred to the " fabulous " sums to which his clients are entitled, but mentioned that none the less he believed it might be feasible to arrange a settlement on payment of say twice the amount of the expenses already incurred (put at £350,000) with annuities to each of the heirs sufficient to enable them to live in the way they are reasonably entitled to expect. No promise that this statement would be considered, or even put forward, was made.

A. W. B.

79071/35 [No. 28]. No. 42 PROOF.

FOREIGN OFFICE

to

COLONIAL OFFICE.

[*Answered by No.* ~~79071/35 [No. 30].~~ 44]

SIR, Foreign Office, S.W.1, 6th July, 1935.

With reference to Foreign Office letter of the 11th April*, I am directed by Secretary Sir Samuel Hoare to request you to lay before Mr. Secretary MacDonald the accompanying copy of a Note from the Turkish Ambassador regarding the claims of certain of the heirs of the late Sultan Abdul Hamid, who are stated to have retained their Turkish nationality and not to have entered into any association with the Consolidated Eastern Corporation.

2. There is no trace in this Department of the receipt of any specific claims on behalf of the heirs in question. Subject therefore to the concurrence of Mr. MacDonald and to that of the Treasury Solicitor, Sir Samuel Hoare would propose to reply to the Turkish Ambassador that His Majesty's Government do not appear to have received hitherto any claim on behalf of the three ladies mentioned in His Excellency's note, but that if and when such a claim is presented, setting out fully the arguments on which it is based, His Majesty's Government will be prepared to give it their attention.

3. A similar letter is being addressed to the Treasury Solicitor.

I am, &c.,

G. W. RENDEL.

Enclosure in No. 42,

MONSIEUR LE SECRÉTAIRE D'ETAT, Turkish Embassy, London, le 30 mai, 1935.

Je n'avais pas manqué en son temps de communiquer à mon Gouvernement la lettre, en date du 21 mars, 1935, sub. No. E 1681/187/44 par laquelle le Foreign Office, se référant au memorandum communiqué par Bay Sedat Zeki en date du 9 novembre, 1934, et d'ailleurs confirmé par une note verbale de l'Ambassade en date du 1er février, 1935, déclarait ne pas avoir connaissance d'une réclamation présentée par des subjects turcs-héritiers d'Abdul Hamit relativement aux propriétés de feu Abdul Hamit. J'ai l'honneur, en réponse à ladite lettre et sur les instructions de mon Gouvernement, de porter ce qui suit à la connaissance de Votre Excellence:—

Mon Gouvernement est informé que les héritiers d'Abdul Hamit ayant donné procuration à une société étrangère ne sont pas des ressortissants turcs. Les droits dont mon Gouvernement s'estime parfaitement autorisé à poursuivre la reconnaissance sont, ainsi qu'il avait déjà été dit dans les communications antérieures de l'Ambassade, ceux des héritiers d'Abdul Hamit demeurés sujets turcs, notamment de Mmes Emsalnur, Müsfika et Behice, lesquelles résident actuellement en Turquie et n'ont contracté aucune association avec la Société canadienne dont il est question dans la lettre de Votre Excellence. Ces droits paraissent à mon Gouvernement ressortir clairement des stipulations *ad hoc* du traité de Lausanne, et je suis chargé de prier Votre Excellence de vouloir bien tenir la main à ce qu'ils soient pris en sérieuse considération. Je suis également chargé d'ajouter que mon Gouvernement est parfaitement disposé à faire trancher la question par voie d'arbitrage si une entente ne pouvait intervenir sur ce point entre les deux Gouvernements.

J'ai l'honneur d'être, avec les assurances de ma plus haute considération,
de Votre Excellence,

le dévoué serviteur,

FETHI OKYAR.

Son Excellence
The Rt. Hon. Sir John Simon, G.C.S.I., K.C.V.O., K.C., P.C.,
Secrétaire d'Etat de Sa Majesté Britannique,
aux Affaires Etrangères, Londres.

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* No. 79071/35 [No. 15]. not printed

79071/35 [No. 29]. No. 43. PROOF.

TREASURY SOLICITOR

to

COLONIAL OFFICE.

The Treasury Solicitor presents his compliments to the Under-Secretary of State for the Colonies and begs to forward herewith for information a copy of the reply which he is sending this day to Foreign Office letter of the 6th instant* dealing with a note from the Turkish Ambassador regarding the claims of the heirs of the Ex-Sultan Abdul Hamid II.

Storey's Gate, S.W.1.
9th July, 1935.

Enclosure in No. 43.

SIR, Storey's Gate, S.W.1, 9th July, 1935.

In reply to your letter of the 6th instant, I have to state for the information of the Secretary of State that I concur in the reply that it is now proposed to make to the note dated 30th May from the Turkish Ambassador regarding the claims of those of the heirs of the late Sultan Abdul Hamid, who are stated to have retained their Turkish nationality and not to have entered into any association with the Consolidated Eastern Corporation.

A copy of this letter has been sent to the Colonial Office.

I am, &c.,
A. W. BROWN.

The Under-Secretary of State,
Foreign Office.

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* See No. ~~79071/35 [No. 28]~~. 42

79071/35 [No. 30]. No. 44. PROOF.

COLONIAL OFFICE

to

FOREIGN OFFICE.

SIR, Downing Street, 30th July, 1935.

I am directed by Mr. Secretary MacDonald to acknowledge the receipt of your letter of the 6th July*, and to request you to inform Secretary Sir Samuel Hoare that, subject to the comment in the following paragraph of this letter, he concurs in the reply which it is proposed to make to the Turkish Ambassador's note of the 30th May regarding the claims of those of the heirs of the late Sultan Abdul Hamid who are stated to have retained their Turkish nationality and not to have entered into any association with the Consolidated Eastern Corporation.

2. The ladies mentioned in paragraph 2 of the Turkish Ambassador's note are cited as heirs of the late Sultan Abdul Hamid in the annexures to the memorandum† submitted to the Anglo-Turkish Mixed Arbitral Tribunal on behalf of the heirs on the 28th June, 1926, and it is observed from paragraph 4 of the despatch from His Majesty's Representative at Angora of the 15th January, 1935, (a copy of which was enclosed in Foreign Office letter of the 29th January‡) that the authenticity of the list of heirs submitted with the memorandum was never challenged. In these circumstances, Mr. MacDonald feels some doubt whether it would be strictly in accordance with the facts if the Turkish Ambassador were to be informed that there is no trace of the receipt of any specific claims on behalf of the three heirs in question. Nevertheless, he is content to leave the decision on this point to the Treasury Solicitor and the Secretary of State for Foreign Affairs.

3. A copy of this letter is being sent to the Treasury Solicitor.

I am, &c.,

O. G. R. WILLIAMS.

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* No. ~~79071/35 [No. 28]~~. 43 † See pages 2–12 of M.E. No. 23. ‡ No. ~~79071/35 [No. 9]~~. 28

Abdul Hamid—(C.21839/86). 12.

19071/1/36 [No 27] ENCLOSURE.

No. 45

Paris, le 12 Septembre, 1936.

CONSULTATION

relative aux réclamations des héritiers du Sultan Abdul-Hamid II portant sur les biens et propriétés visés à l'art. 60, al. 2, du Traité de Lausanne du 24 Juillet 1923.

PRÉAMBULE.

1.—Le Sultan Abdul-Hamid II était Souverain de l'Empire ottoman et Khalife des musulmans sunnites, de 1876 à 1909.

En Juillet 1908, il avait dû accepter, à la suite de la révolution jeune-turque, le régime constitutionnel.

Déposé en Avril 1909, il est décédé en 1918.

2.—Le Sultan Abdul-Hamil II avait possédé des biens et propriétés très considérables et de nature diverse.

Ces biens et propriétés étaient épars sur tout le territoire de l'Empire ottoman, et, la plupart d'entre eux, acquis sous le règne d'Abdul-Hamid II, étaient inscrits au nom de ce dernier dans les registres cadastraux, avec condition de transmission à ses enfants.

3.—Tous les biens et propriétés sus-mentionnés étaient gérés par une administration spéciale, dénommée " Hazine-i-Hassa-i-Chahané Nézaréti ".

La traduction littérale de cette expression est: " Ministère du Trésor privé impérial ".

Mais, dans la pratique, l'expressoin " Ministère de la Liste civile impériale " ou, plus brièvement, l'expression " Ministère de la Liste civile " servait à désigner le " Haziné-i-Hassa-i-Chahané Nézaréti ".

Et, par " Liste civile ", on entendait l'ensemble des biens et propriétés du Sultan, y compris l'allocation impériale.

Le Ministère de la Liste civile avait le caractère d'administration publique. A ce titre, les dispositions de la loi sur le Timbre, relatives aux administrations publiques, lui étaient applicables.

Son chef ne siégeait pas au Conseil des Ministres.

4.—Antérieurement à sa déposition, le Sultan Abdul-Hamid II avait, par un Iradé* (décret impérial) du 26 Août 1324 (8 Septembre 1908), transféré et abandonné à l'Etat ottoman une partie importante des terrains et propriétés administrés par le Ministère de la Liste civile.

5.—Postérieurement à la déposition du Sultan Abdul-Hamid II, son successeur immédiat, le Sultan Mehmed Réchad V avait, par un Iradé du 20 Avril 1325 (2 Mai 1909), ordonné le transfert et l'abandon à l'Etat ottoman des propriétés, fermes et concessions minières incorporés dans le Domaine impérial depuis l'année 1293 (1876) au nom de l'ex-Souverain, ainsi que divers autres biens compris dans ce Domaine.

6.—Les biens et propriétés, cédés à l'Etat ottoman en vertu des Iradés de 1908 et 1909 et situés dans certains territoires détachés de l'Empire ottoman, sont expressément visés dans les alinéas 2 et 3 de l'article 60 du Traité de Lausanne.

7.—Cet article est ainsi conçu:

> " Les Etats en faveur desquels un territoire a été ou est détaché de l'Empire ottoman, soit à la suite des guerres balkaniques, soit par le présent Traité, acquerront gratuitement tous biens et propriétés de l'Empire ottoman situés dans ce territoire.
>
> " Il est entendu que les biens et propriétés dont les Iradés du 26 Août 1324 (8 Septembre 1908), du 20 Avril 1325 (2 Mai 1909) ont ordonné le transfert de la Liste civile à l'Etat ainsi que ceux qui, au 30 Octobre 1918, étaient administrés

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* C'est par Iradés que se manifestait le plus souvent la volonté souveraine, spécialement pour l'approbation des Lois et Règlements de l'Empire. Les Iradés étaient enregistrés dans un Bureau spécial et transmis aux Services intéressés par le Secrétariat du Souverain.

par la Liste civile au profit d'un service public, sont compris parmi les biens et propriétés visés à l'alinéa précédent, les dits Etats étant subrogés à l'Empire ottoman en ce qui concerne ces biens et propriétés, les vakoufs constitués sur ces biens devant être respectés.

" Le litige surgi entre le Gouvernement hellénique et le Gouvernement turc relativement aux biens et propriétés passés de la Liste civile à l'Etat et situés sur les territoires de l'ancien Empire ottoman transférés à la Grèce, soit à la suite des guerres balkaniques, soit postérieurement, sera soumis, selon un compromis à conclure, à un tribunal arbitral à La Haye, conformément au Protocole spécial N° 2 attaché au Traité d'Athènes du 1/14 Novembre 1913.

" Les dispositions du présent Article ne modifieront pas la nature juridique des biens et propriétés inscrits au nom de la Liste civile ou administrés par elle et non visés aux alinéas 2 et 3 du présent Article ".

8.—En exécution de l'alinéa 2 de cet article, les Etats successeurs sont entrés en possession des biens et propriétés dont les Iradés précités avaient ordonné le transfert à l'Etat ottoman, ainsi que des biens et propriétés qui, au 30 Octobre 1918, étaient administrés par la Liste civile au profit d'un service public.

9.—Mais, les héritiers du Sultan Abdul-Hamid II contestent la légitimité de cette entrée en possession.

Ils réclament, en conséquence, la restitution des biens et propriétés mentionnés au N° 8 ci-dessus ou le paiement de leur contre-valeur.

Et, en tant que ces biens et propriétés sont situés dans des territoires placés sous le mandat britannique, leurs réclamations sont dirigées contre le Gouvernement de Sa Majesté Britannique.

10.—Aux termes d'un acte de notoriété en date du 9 Rébi-ul-Akhir 1338 (1922), délivré par l'autorité religieuse alors compétente en matière successorale, les héritiers du Sultan Abdul-Hamid II sont:

(*a*) Les Princes Sélim, Abdul-Kadir, Ahmed, Burhan-ed-Dine, Abdur-Rahime, Nour-ed-Dine et Abid, ses fils;

(*b*) Les Princesses Zékié, Naïmé, Naïlé, Chadié, Aïché et Réfia, ses filles;

(*c*) Mesdames Bédri Félek, Nadjié, Fatma, Emsal-Nour, Sazikié, Peyvesté, Muchfiké et Béhidjé, ses épouses.

De ces huit dames, considérées comme ayant été les épouses du Sultan Abdul-Hamid II, des trois premières sont décédées, selon des indications récemment fournies.

11.—Ayant été consulté au nom du Gouvernement de Sa Majesté Britannique par l'honorable Treasury Solicitor sur les réclamations des héritiers du Sultan Abdul-Hamid II, le sous-signé, après avoir examiné les consultations données à propos de la succession de ce dernier, ainsi que les textes qui se rapportent directement ou indirectement aux dites réclamations, croit devoir émettre l'avis suivant:

OBSERVATIONS GÉNÉRALES.

12.—Pour pouvoir apprécier dûment le principe même de la revendication exercée par les héritiers du Sultan Abdul-Hamid II, il semble nécessaire de posséder quelques précisions sur les points ci-après:

(*a*) Le régime existant en Turquie antérieurement à la révolution jeune-turque de Juillet 1908;

(*b*) Ce qu'était le Domaine impérial;

(*c*) Le mode de transmission du Domaine impérial au décès des Sultans ou à la suite de leur déposition;

(*d*) Le changement essentiel apporté par le Sultan Abdul-Hamid II à ce mode de transmission; les bénéficiaires et la valeur de ce changement.

(a) Le régime existant en Turquie antérieurement à la révolution jeune-turque de Juillet 1908.

13.—Jusqu'à la révolution de Juillet 1908 et abstraction faite du peu de mois où fut appliquée la Constitution promulguée en 1876, la Turquie était une *monarchie despotique*, au sens plein de ces mots.

Le Souverain de Turquie détenait tout le pouvoir législatif et tout le pouvoir exécutif, et, grande était son action sur le pouvoir judiciaire lui-même.

Sauf en certaines matières, la volonté du Souverain était la loi suprême.

Etant la loi suprême, la volonté du Souverain n'était point liée par les lois et règlements qu'il édictait.

Celles-là, comme ceux-ci, obligeaient les sujets turcs et parfois les ressortissants étrangers, mais non le Souverain, en tant que ses intérêts étaient en jeu.

Ainsi, notamment et contrairement à ce qui est dit dans la Consultation de M. Politis en date du 17 Janvier 1934, N° 7, *in fine*—sur la foi d'une déclaration inexacte du Ministre ottoman du Cadastre en date du 8 Octobre 1921 annexée à cette Consultation—les propriétés du Souverain n'étaient assujetties à aucun impôt*; et, il suffisait même que le bétail soumis à la taxe annuelle fût dirigé, aux époques des perceptions, sur des pâturages relevant du Domaine impérial, pour que le fisc ne pût exercer ses droits†.

Mieux encore, dans les terres appartenant au Souverain, la dîme, incombant aux paysans qui cultivaient ces terres, était perçue, non par le fisc, mais pour le compte personnel du Souverain‡§.

(b) Ce qu'était le Domaine impérial.

14.—S'agissant de définir le Domaine des Sultans de Turquie, il faut se garder de s'inspirer des conceptions s'appliquant à la formation du Domaine des anciens Khalifes ou des Souverains modernes.

En Turquie, le Domaine du Souverain avait un caractère tout particulier.

Le Souverain turc possédait une première catégorie de biens que son accession au trône lui faisait acquérir.

Parmi ces biens, se trouvaient les " Emlak-i-Hakanié " (propriétés du Souverain).

Sous le règne des derniers Sultans, le Souverain jouissait en outre d'une allocation impériale.

Mais, son droit de disposition ne se limitait pas à ces deux catégories de biens.

Le Souverain de Turquie était maître absolu des biens et ressources de l'Etat, en tant qu'ils n'étaient pas aliénés ou concédés—et, parfois, même quand ils l'étaient.

Ainsi, des terres " Miri " (terres du Domaine public) étaient acquises par le Souverain‖ sur son seul Iradé; et, si tant est que ces acquisitions étaient payées, les sommes versées étaient insignifiantes, sans rapport avec la valeur des terres acquises.

Ainsi, le Souverain *s'octroyait* des concessions minières et autres concessions, toujours sur son seul Iradé et sans avoir à subir les obligations auxquelles étaient astreints les simples particuliers.

Ainsi, le Souverain puisait à sa guise dans les ressources publiques¶—revenus et produits des emprunts d'Etat—en se bornant à assurer tant bien que mal, et généralement de façon très imparfaite, les services de l'Etat.

Il puisait dans ces ressources, soit pour subvenir aux énormes dépenses du Harem (gynécée) impérial et de la Cour impériale, soit pour se faire construire des palais coûteux, soit pour faire des dons à ses favoris et pour entretenir ses innombrables espions, soit encore pour acheter des propriétés qui, comme les terres " Miri " et les concessions ci-dessus mentionnées, s'ajoutaient aux " Emlak-i-Hakanié ".

Toute distinction entre le Domaine impérial et les revenus impériaux, d'une part, et le Domaine public et les ressources publiques, d'autre part, était donc illusoire, les deuxièmes venant se fondre dans les premiers au gré du Souverain.

(c) Le mode de transmission du Domaine impérial.

15.—La dévolution des biens des Sultans était régie par des principes qui, entièrement différents du droit commun musulman, étaient spéciaux à la Turquie.

Contrairement à l'opinion exprimée par M. le Professeur Sabonadière en 1921, on ne saurait donc déterminer les conditions de cette dévolution d'après ce droit commun, ni d'après ce qui à pu se passer à la mort du prophète Mahomet ou des Khalifes *qui n'étaient pas à la fois Khalifes et Sultans de Turquie.*

16.—En Turquie, il était de règle que, au décès ou à la suite de la déposition d'un Sultan, son successeur prenait possession de tous les biens mobiliers et immobiliers qui avaient appartenu au Sultan décédé ou déposé.

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* Cf. Young, Corps de Droit ottoman, Vol. VI, page 120, et Morawitz, Les Finances de la Turquie, page 74.

† Cf. Morawitz, op. cit., page 81.

‡ Cf. Heidborn, Les Finances ottomanes, page 223.

§ Dans la déclaration sus-mentionnée du Ministre du Cadastre, il est fait état de ce que les litiges, concernant les biens acquis par le Sultan Abdul-Hamid II, étaient, comme les litiges relatifs aux biens appartenant à des particuliers, de la compétence des tribunaux ordinaires.

Il convient de faire remarquer que bien rares étaient ceux qui osaient engager un procès contre le Sultan, et que, d'autre part, les tribunaux ordinaires étaient tout aussi compétents dans tous procès civils surgis entre les administrations de l'Etat et les particuliers.

‖ Cf. Heidborn, op. cit., page 223.

¶ Cf. Morawitz, op. cit., pages 49, 52, 67, 68.

Car, ce dernier les avait détenus en tant que Sultan et seulement en tant que Sultan.

Dès lors, aucune discrimination n'était faite entre ces mêmes biens, selon qu'ils auraient été des biens personnels de l'ex-Sultan ou des biens de la Couronne.

Si le nouveau Sultan était de nature généreuse, il abandonnait à la famille de son prédécesseur telle partie de la fortune de celui-ci. Mais, généralement, les princes impériaux, tous les princes impériaux, y compris le prince héritier, vivaient obscurément du traitement que leur accordait le Souverain régnant.

Ainsi, le Sultan Mourad V, qui succéda en 1876 à son oncle le Sultan Adbul-Aziz, était, à son avénement, un homme relativement pauvre, bien qu'il fût fils du Sultan Abdul-Médjid.

Ainsi, le Sultan Abdul-Hamid II, qui succéda la même année à son frère Mourad V, était, à son avénement, un homme rien moins que riche.

Ainsi, le Sultan Mehmed Réchad V, qui succéda en 1909 à son frère Abdul-Hamid II, était, à son avénement, lui aussi un homme qui possédait fort peu de biens.

Et, c'est à titre exceptionnel que des princes impériaux jouissaient d'une véritable fortune personnelle. Mais, celle-ci était toujours assez peu importante pour ne pas susciter la jalousie ou la crainte du Sultan régnant.

(d) Le changement essentiel apporté par le Sultan Abdul-Hamid II au mode de transmission du Domaine impérial: les bénéficiaires et la valeur de ce changement.

17.—Le Sultan Abdul-Hamid II n'ignorait pas qu'à sa disparition, l'immense patrimoine qu'il avait amassé, au détriment du Domaine public et souvent des simples particuliers, passerait immanquablement, en vertu de la règle fondamentale ci-dessus rappelée, en la possession de son successeur, et que sa propre descendance en serait réduite aux allocations de ce dernier.

Soucieux de l'avenir de *ses enfants*, il entreprit de transgresser, sur une très vaste échelle, cette règle plus que séculaire et prescrivit, en conséquence, aux administrations compétentes d'inscrire à son propre nom les nombreuses et considérables propriétés qu'il avait acquises et de spécifier, sur les registres de ces administrations. que les propriétés ainsi inscrites devaient être, à sa mort, transmises à *ses enfants*.

S'il en était besoin, cet ordre fournirait, par lui-même, la preuve de l'existence de la susdite règle.

18.—Disposant de la puissance souveraine, le Sultan Abdul II pouvait donner un tel ordre qui comportait l'altération essentielle des conditions de transmission du Domaine impérial.

Mais, il dépendait tout autant de ceux qui, après lui, seraient investis ou se croiraient investis de la puissance souveraine, de ne pas tenir compte de ce même ordre et de rétablir l'ancienne règle ou de la modifier.

Ainsi a fait le Sultan Mehmed Réchad V en transférant et en abandonnant à l'Etat ottoman les biens inscrits au nom du Sultan Abdul-Hamid II et incorporés dans la Liste civile depuis 1876 (*supra*, N° 5).

Ainsi a fait le Sultan Mehmed Vahd-ed-Dine VI, successeur de Mehmed Réchad V, en revendiquant notamment les biens qui avaient fait l'objet des Iradés de 1908 et 1909, en les revendiquant, *non point pour les enfants d'Abdul-Hamid II*, mais pour lui-même en sa qualité de Sultan et de Chef de la Famille impériale possédant *seul* le droit de jouissance, d'administration et de *disposition* de ces biens*.

Ainsi a fait la Grande Assemblée Nationale de Turquie, qui, exerçant au nom de la nation turque l'autorité souveraine, a pris, par la loi du 3 Mars 1924, notamment les dispositions suivantes:

> Article 8.—*Les biens immeubles enregistrés au Tapou (titre du cadastre) au nom des personnes ayant exercé la dignité de Padichah (Sultan) dans l'Empire ottoman, et situés dans le territoire de la République de Turquie, sont acquis à la nation.*
>
> Article 9.—Tous les mobiliers garnissant les palais, Kiosques et autres bâtisses appartenant à la Royauté déchue, les services de table, les tableaux, les œuvres d'art, ainsi que tous objets s'y trouvant sont acquis à la nation.
>
> Article 10.—Les immeubles dits " Emlak-i-Hakanié ", qui avaient été antérieurement transférés à la nation, tous les édifices appartenant à la Royauté déchue l'édifice du Vieux Trésor, les palais, Kiosques, avec tout ce qu'ils contiennent, ainsi que les autres bâtisses ou terrains sont acquis à la nation.

* Cf. Consultation de MM. Roguin et Pellis, en date du 10 Août 1925, pages 5, 9, 10, 31 et le texte du décret-loi du 8 Janvier 1920.

19.—Sous le bénéfice de ces observations auxquelles il sera référé, en tant que de besoin, dans la suite de la présente consultation, le soussigné exposera la substance de la thèse soutenue par les héritiers du Sultan Abdul-Hamid II et la discutera en détail.

LA THÈSE DES HÉRITIERS.

20.—La thèse des héritiers, qui, pour la défense d'intérêts dissemblables, est développée dans les Consultations précitées de M. Politis et de MM. Roguin et Pellis, peut être ainsi résumée:

L'article 60, alinéa 2 du Traité de Lausanne ne permet pas, *en termes absolus*, aux Etats successeurs d'acquérir gratuitement, à l'instar des biens et propriétés de l'Empire ottoman, les biens et propriétés dont les Iradés de 1908 et 1909 avaient ordonné le transfert de la Liste civile à l'Etat, ni les biens et propriétés qui, au 30 Octobre 1918, étaient administrés par la Liste civile au profit d'un service public.

Il comporte seulement, et de façon expresse, la subrogation de ces Etats à l'Empire ottoman en ce qui concerne les biens et propriétés de ces deux dernières catégories.

N'étant que *subrogés* à la l'Empire ottoman, lesdits Etats ne peuvent avoir, sur ces mêmes biens, plus de droits que n'en avait l'Empire ottoman.

Dès lors, ils pourront en réclamer la possession si l'Empire ottoman en était lui-même le maître. Ils ne le pourront pas au cas contraire.

Mais, l'Empire ottoman *n'était pas le maître* des susdits biens et propriétés.

Il n'en était pas le maître, pour les multiples raisons suivantes:

L'Iradé de 1908 avait pour condition la conclusion d'un emprunt de 1.000.000 Livres turques destinées au paiement des dettes de la Liste civile. Or, cet emprunt n'a pas été conclu.

L'Iradé de 1909, ordonnant le transfert à l'Etat des propriétés, fermes et concessions minières, acquises au nom de l'ex-Souverain, n'était qu'une mesure de confiscation de biens appartenant à autrui. Or, toute confiscation était interdite par la loi ottomane.

De plus, la teneur même de cet Iradé de 1909, qui ne fait aucune mention de l'Iradé de 1908, montre que ce dernier Iradé n'était pas considéré comme ayant une existence légale.

Pour être valables en droit, l'un et l'autre Iradés auraient dû être incorporés dans la législation ottomane. Or, cette incorporation n'a pas eu lieu.

Pour être valables en fait, l'un et l'autre Iradés auraient dû être suivis d'actes portant exécution de leurs dispositions. Or, aucune mesure d'exécution n'a été prise à la suite de leur promulgation.

Pour que les transferts ordonnés fussent effectifs, ils auraient dû être transcrits sur les registres cadastraux. Or, cette transcription n'a pas eu lieu.

Enfin, l'un et l'autre Iradés ont été annulés par un décret-loi du 8 Janvier 1920, promulgué sous le règne du Sultan Mehmed Vahd-ed-Dine VI.

Les deux Iradés, étant ainsi lettre morte à tous points de vue, n'ont pu créer, au profit de l'Empire ottoman, aucun droit sur les biens et propriétés en question.

En conséquence, ceux-ci n'ont pu être cédés aux Etats successeurs, et doivent faire retour aux héritiers désignés du Sultan Abdul-Hamid II, sur la seule production des titres établissant le droit de propriété de leur auteur.

DISCUSSION DE LA THÈSE DES HÉRITIERS.

21.—Comme on le voit, la clef de voûte de toute la thèse des héritiers est constituée par l'article 60, alinéa 2 du Traité de Lausanne.

Il convient donc de déterminer, tout d'abord, le sans de cette clause.

A.—Le sens de l'article 60, alinéa 2 du Traité de Lausanne.

22.—Vu l'importance du débat, il y a lieu de reproduire ici le texte des alinéas 1er et 2ème de l'article 60, la dernière de ces dispositions se référant expressément à la première.

Alinéa 1er:

> " Les Etats en faveur desquels un territoire à été ou est détaché de l'Empire ottoman, soit à la suite des guerres balkaniques, soit par le présent Traité, acquerront gratuitement tous biens et propriétés de l'Empire ottoman, situés dans ce territoire ".

Alinéa 2ème:

> " Il est entendu que les biens et propriétés dont les Iradés du 26 Août 1324 (8 Septembre 1908), du 20 Avril 1325 (2 Mai 1909), ont ordonné le transfert de la Liste civile à l'Etat ainsi que ceux qui, au 30 Octobre 1918, étaient

administrés par la Liste civile au profit d'un service public, sont compris parmi les biens et propriétés visés à l'alinéa précédent, lesdits Etats étant subrogés à l'Empire ottoman en ce qui concerne ces biens et propriétés, les vakoufs constitués sur ces biens devant être respectés ".

23.—La seule lecture de ces textes permet de constater combien la thèse soutenue par les héritiers s'écarte de la lettre de ces mêmes textes.

Les biens et propriétés, considérés dans l'un et l'autre alinéas, forment, non pas trois catégories distinctes, mais une même catégorie de biens et propriétés: les biens et propriétés appartenant à l'Empire ottoman et situés dans les territoires détachés.

En effet, l'alinéa 2 dispose, de la façon la plus nette, que les biens et propriétés, qui y sont désignés, sont *compris* parmi les biens et propriétés visés à l'alinéa précédent.

Or, quels sont " les biens et propriétés visés à l'alinéa précédent "?

Ce sont " les biens et propriétés de l'Empire ottoman ".

Dès lors, il est évident que les biens et propriétés, indiqués dans les deux alinéas, doivent avoir, dans des conditions identiques, un sort commun qui, défini dans l'alinéa 1er, est leur acquisition gratuite par les Etats successeurs.

24.—Cette constatation, qui n'est même pas une interprétation, est pleinement confirmée par l'expression " ces biens et propriétés " deux fois employée dans l'alinéa 2, *in fine*.

En effet, d'après les règles bien connues de la grammaire française, il est clair que cette expression ne peut se rapporter qu'aux biens et propriétés dont la mention en est le plus proche.

Or, quels sont les biens et propriétés dont la mention est le plus proche de la susdite expression?

Ce sont " les biens et propriétés visés à l'alinéa précédent ", lesquels comprennent les biens et propriétés énoncés à l'alinéa 2.

25.—Cette même constatation est encore confirmée par la phrase finale de l'alinéa 2, concernant les vakoufs (fondations pieuses) constitués.

En effet, il est hors de doute que les vakoufs doivent être respectés par les Etats successeurs dans tous les biens et propriétés faisant l'objet des alinéas 1 et 2.

26.—Il faut cependant répondre à la question ci-après:

Puisque l'ensemble de ces biens et propriétés ne forme qu'une seule et même catégorie, pourquoi certains d'entre eux sont-ils spécialement désignés dans l'alinéa 2?

La réponse à cette question est fort simple, et elle est fournie par les termes qui sont placés en tête de l'alinéa 2: " Il est entendu que . . . . ".

Ces termes prouvent, de manière indiscutable, que, abstraction faite de la question des vakoufs, l'unique objet de l'alinéa 2 est de déterminer *toute* la portée de l'alinéa 1er et d'éviter ainsi une incertitude quelconque sur le sort des biens et propriétés indiqués dans l'alinéa 2.

27.—Le raisonnement, exposé dans la thèse des héritiers, est fait comme si l'alinéa 2 était rédigé de la façon suivante:

> " En ce qui concerne les biens et propriétés dont les Iradés . . . . ont ordonné le transfert de la Liste civile à l'Etat, ... les dits Etats seront subrogés à l'Empire ottoman ".

Dans cette hypothèse, il y aurait peut-être lieu d'examiner si la subrogation devait produire ses effets ordinaires; si, par conséquent, les Etats successeurs n'auraient acquis les " biens-iradés " qu'au cas où, par le susdit transfert, l'Etat ottoman était devenu propriétaire de ces biens; et si, dans l'affirmative, cette acquisition n'aurait pu avoir lieu que moyennant toutes les charges qui, indistinctement, grevaient ces mêmes biens.

Mais, grande est la différence entre la formule ci-dessus et la formule qui a été adoptée pour l'alinéa 2.

Dans cette dernière formule, combinée avec l'alinéa 1er, *les signataires du Traité ont eu soin de préciser, dans les termes les plus catégoriques, les effets essentiels de la subrogation telle qu'ils l'ont conçue.*

Ils ont spécifié que, *par cette subrogation*, les Etats successeurs *acquerront* les biens et propriétés mentionnés dans l'alinéa 2, et que ces Etats les acquerront *gratuitement*, c'est-à-dire sans qu'il leur en coûte rien—sous la seule réserve du respect des vakoufs.

Il n'est donc pas possible d'appliquer, à la subrogation incluse dans l'alinéa 2, les principes généraux qui sont applicables en matière de subrogation et *qui ne le sont qu'en tant que les effets et conditions de celle-ci n'ont pas été déterminés dans l'acte portant subrogation.*

Appliquer ces principes généraux dans le cas présentement considéré, serait méconnaître les dispositions *certaines* et *impératives* de l'alinéa 2. Ce serait dénaturer la lettre même de ce texte.

Dès lors, sur la seule constatation que des biens quelconques, situés dans les territoires détachés, faisaient partie des biens dont les Iradés de 1908 et 1909 avaient ordonné le transfert de la Liste civile à l'Etat ou des biens qui, au 30 Octobre 1918, étaient administrés par la Liste civile au profit d'un service public, les Etats successeurs sont en droit de les posséder *de plano*.

28.—Mais, par de nombreuses et longues citations, empruntées aux procès-verbaux des discussions qui ont précédé la signature du Traité de Lausanne, les auteurs des Consultations précitées ont entrepris de démontrer que l'esprit, qui a présidé à la rédaction de l'alinéa 2, répond aux vues exprimées dans ces Consultations.

A l'argumentation ainsi énoncée, on pourrait valablement objecter que, lorsque les termes d'un acte sont suffisamment explicites—comme le sont les termes de l'alinéa 2—il est communément admis que cet acte doit être accepté tel qu'il est, sans qu'il y ait lieu de l'interpréter par la recherche de son esprit lequel, dans ce cas, se confond obligatoirement avec la lettre de l'acte.

Sous cette réserve, qui est fondamentale et de droit, le soussigné croit cependant pouvoir affirmer que la *commune* intention des parties, dans l'alinéa 2, est indubitablement conforme à l'exposé qui a été fait de la lettre de cet alinéa.

29.—Cette commune intention des parties doit être recherchée, non dans les appréciations, souvent confuses et parfois inexactes, qui ont été émises à propos des biens de la Liste civile, mais dans les propositions et contre-propositions successives qui " concrétisent " l'évolution des discussions.

(*a*) Le 6 Janvier 1923, les Délégations alliées proposent la clause suivante:

> " Les Etats, en faveur desquels un territoire a été détaché de la Turquie, acquerront gratuitement tous biens et propriétés situés dans ce territoire et enregistrés au nom de l'Empire ottoman *et de la Liste civile* "*.

La Délégation turque rejette ces mots " et de la Liste civile " et demande que les biens enregistrés au nom de la Liste civile soient exclus des biens acquis par les Etats en faveur desquels un territoire a été détaché de la Turquie.

(*b*) Le 8 Mars 1923, la Délégation turque fait la contre-proposition suivante:

> " Les Etats, en faveur desquels un territoire a été détaché de la Turquie, acquerront gratuitement tous biens et propriétés situés dans ce territoire et enregistrés au nom de l'Empire ottoman.
>
> " *Les droits de la Liste civile sur les biens et propriétés situés dans lesdits territoires et inscrits en son nom sont maintenus* "†

Cette contre-proposition n'est pas agréée par les Délégations alliées.

(*c*) Le 12 Juin 1923, les experts financiers, auxquels la question avait été déférée, soumettent le texte suivant:

> " Les Etats en faveur desquels, en Asie, un territoire a été détaché de l'Empire ottoman par le présent Traité, acquerront gratuitement tous biens et propriétés de l'Empire ottoman situés dans ce territoire.
>
> " *Il est entendu que les biens et propriétés dont les Iradés du 26 Août 1324 (8 Septembre 1908) et du 20 Avril 1325 (2 Mai 1909) ont ordonné le transfert de la Liste civile à l'Etat, sont compris parmi les biens et propriétés visés par l'alinéa précédent.*
>
> " Les biens et propriétés de la Liste civile non visés par lesdits Iradés seront considérés comme propriété privée "‡

(*d*) Le 23 Juin 1923, au cours d'une réunion privée, la Délégation turque fait observer " qu'il y a lieu de *distinguer* trois catégories de biens: 1° les biens de l'Empire ottoman que les Etats successeurs acquerront gratuitement; 2° les biens de la Liste civile, transférés à l'Etat par les Iradés de 1908 et 1909, les pays détachés sont, en ce qui concerne ces biens, subrogés aux droits de l'Empire ottoman; ces biens continuent, d'ailleurs, le plus souvent à être administrés par la Liste civile; 3° les biens personnels du Khalife ou des membres de sa famille, qui sont administrés par la Liste civile "§.

Le question est renvoyée aux experts.

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* Acts de la Conférence de Lausanne, Série I, Tome III, page 47.
† Actes de la Conférence de Lausanne, Série I, Tome IV, page 45.
‡ Actes de la Conférence de Lausanne, Série II, Tome I, page 249.
§ Actes de la Conférence de Lausanne, Série II, Tome I, pages 397 et 398.

(*e*) Le 29 Juin 1923, les experts apportent un nouveau texte ainsi conçu :

" Les Etats en faveur desquels, en Asie, un territoire est détaché de l'Empire ottoman par le présent Traité acquerront gratuitement tous biens et propriétés de l'Empire ottoman situés dans ce territoire.

" *Il est entendu que les biens et propriétés dont les Iradés du 26 Août 1324 (8 Septembre 1908), du 20 Avril 1325 (2 Mai 1909), ont ordonné le transfert de la Liste civile à l'Etat ainsi que ceux qui, au 30 Octobre 1918, étaient administrés par la Liste civile au profit d'un service public, sont compris parmi les biens et propriétés visés à l'alinéa précédent, lesdits Etats étant subrogés à l'Empire ottoman en ce qui concerne ces biens et propriétés, les vakoufs constitués sur ces biens devant être respectés.*

" Les dispositions du présent article ne modifieront pas la nature juridique des biens et propriétés inscrits au nom de la Liste civile ou administrés par elle et non visés l'alinéa précédent "*.

C'est ce texte qui, avec quelques modifications, notamment concernant les biens passés de la Liste civile à l'Etat et situés sur les territoires de l'ancien Empire ottoman transférés à la Grèce, est devenu l'article 60 du Traité de Lausanne.

30.—Il suffit de rapprocher les termes des observations ci-dessus de la Délégation turque et les termes du texte traduisant l'*accord final*, pour constater que, spécialement en ce qui concerne les biens-iradés, *ce ne sont pas le Délégations alliées qui ont adhéré au point de vue de la Délégation turque, mais que c'est celle-ci qui a adhéré au point de vue des Délégations alliées.*

En effet, si le point de vue de la Délégation turque avait prévalu, l'accord final aurait consacré la distinction, *voulue par la Délégation turque*, entre les biens appartenant à l'Empire ottoman et les biens-iradés.

Or, tout au contraire, les uns et les autres ont été confondus en une même masse, puisque les derniers ont été *compris* dans les premiers.

Si le point de vue de la Délégation turque avait été adopté, la subrogation des Etats successeurs aurait été exprimée—*comme le voulait la Délégation turque*—en termes généraux, ce qui aurait pu nécessiter l'examen visé au N° 27 ci-dessus.

Or, tout au contraire, la subrogation a été énoncée, non point en termes généraux, mais par la *spécification de ses modalités de réalisation.*

En acceptant, *moyennant cette spécification*, que les Etats successeurs soient subrogés à l'Empire ottoman, les Délégations alliées n'ont fait que maintenir leur point de vue, et n'ont accepté rien d'autre que ce qui était impliqué pour les biens visés à l'alinéa 1er, puisqu'aussi bien, l'acquisition de ces biens par les Etats successeurs comportait nécessairement leur subrogation à l'Empire ottoman.

On est donc fondé à conclure que l'intention commune des parties, dans l'alinéa 2, a été d'assurer aux Etats successeurs la possession des biens-iradés exactement dans les même conditions que pour les biens énoncés à l'alinéa 1er.

31.—Cette conclusion semble d'autant plus logique et naturelle que la République turque n'a jamais distingué, en territoire turc, les biens-iradés des biens de l'Etat.

Comme il a été exposé, *suprà* N° 18, elle a même, par une loi antérieure à la ratification par elle du Traité de Lausanne, proclamé, avec une particulière et rare insistance, que tous les biens de le Liste civile, ayant appartenu à Abdul-Hamid II ou à tout autre Souverain de l'Empire ottoman, situés sur le territoire turc, sont acquis à la nation.

Il est à peine concevable que la République turque, ayant agi de la sorte *chez elle* —comme c'était son droit—ait pu avoir *réellement* l'intention de contester aux Etats successeurs le droit d'agir comme elle-même à l'égard des biens-iradés.

32.—Les auteurs des sus-dites Consultations invoquent encore, à l'appui de la thèse des héritiers, certaines clauses des Traités qui, à la suite des guerres balkaniques, sont intervenus entre l'Empire ottoman et les Puissances balkaniques, de même que certaines clauses des Traités qui ont mis fin à la guerre générale.

Il convient donc d'examiner les clauses invoquées et de tirer de cet examen les enseignements qu'il comporte.

(*a*) Traité de Constantinople du 16/29 Septembre 1913 entre la Turquie et la Bulgarie, art. 13 :

33.—" Les biens particuliers de Sa Majesté Impériale le Sultan, ainsi que ceux des membres de la dynastie Impériale, seront maintenus et respectés. Sa Majesté et les membres de la dynastie Impériale pourront les vendre ou les affermer par des fondés de pouvoirs.

* Actes de la Conférence de Lausanne, Série II, Tome I, page 257.

" Il en sera de même pour les biens du domaine privé qui appartiendraient à l'Etat . . . ."

Il est clair que par " Biens particuliers du Sultan ", les rédacteurs du Traité ont entendu les seuls biens qui *appartenaient* effectivement au Sultan, et non point les biens transférés de la Liste civile à l'Etat par les Iradés de 1908 et 1909.

En effet, à la date du Traité, nul ne contestait, en Turquie ni ailleurs, l'existence et la validité de ces Iradés.

(*b*) Traité d'Athènes du 1 14 Novembre 1913 entre la Turquie et la Grèce, art. 7 :

34.—" Les biens particuliers de Sa Majesté Impériale le Sultan, ainsi que ceux des membres de la dynastie Impériale, sont maintenus et respectés. Sa Majesté Impériale et les membres de la dynastie Impériale pourront les vendre ou les affermer par des fondés de pouvoirs.

" Tous les différends ou litiges qui surviendraient dans l'interprétation ou l'application du présent article seront réglés par un arbitrage à La Haye, en vertu d'un compromis à conclure ".

Protocole spécial N° 2 :

" Le Gouvernement Impérial ottoman prétendant que les propriétés du domaine privé de l'Etat sises dans les territoires cédés doivent lui rester, et le Gouvernement Royal hellénique n'acceptant pas et prétendant que ces propriétés doivent lui appartenir, les deux parties contractantes ont convenu de soumettre cette question à un Tribunal arbitral à La Haye, en vertu d'un compromis à conclure.

" Le nombre et l'étendue des propriétés en question se trouvent dans la liste jointe à ce protocole ".

35.—Il importe de préciser ici que *cette liste* désigne, notamment et principalement, les propriétés diverses, concessions de mines et entreprises " qui ont passé de la Liste civile à l'Etat ", et que ces biens* sont *classés* parmi les " Biens du Domaine privé de l'Etat ".

L'intérêt qu'offre ce protocole—combiné avec l'article 60, alinéa 3 du Traité de Lausanne—est manifeste :

1° Le protocole constate que, dans les territoires cédés à la Grèce, il existe des biens " passés de la Liste civile à l'Etat ";

2° Il constate que l'attribution de ces biens est contestée entre les Gouvernements hellénique et ottoman, chacun de ces *Gouvernements* prétendant y avoir droit;

3° Les termes mêmes du protocole montrent que les susdits biens ne sont pas des " biens du Sultan et des membres de la dynastie impériale ";

4° L'article 60, alinéa 3 du Traité de Lausanne, se référant aux mêmes biens, constate le litige existant à leur propos entre le Gouvernement hellénique et le *Gouvernement* turc.

Ainsi, le Gouvernement turc, aux termes de l'art. 60, al. 3, comme naguère le Gouvernement ottoman, aux termes du protocole susdit, a revendiqué *pour lui-même, c'est-à-dire pour l'Etat qu'il représente*, les biens en question.

Aucun d'eux ne les a revendiqués pour la Liste civile.

Aucun d'eux n'aurait pu le faire.

Pourquoi ?

Pour la raison, simple, évidente et cependant encore discutée que lesdits biens *appartenaient* à l'Etat ottoman en vertu des Iradés de 1908 et 1909 et que ces Iradés étaient exécutoires.

Voilà qui confirme, s'il en était besoin, les considérations qui ont été exposées suprà Nos. 23 à 31 et qui le seront dans la partie B de la présente consultation.

(*c*) Traité d'Stamboul du 1/4 Mars 1914 entre la Turquie et la Serbie, art. 6 :

36.—Les biens particuliers de Sa Majesté Impériale le Sultan, ainsi que ceux des membres de la dynastie Impériale, seront maintenus et respectés. Sa Majesté Impériale et les membres de la dynastie Impériale pourront les vendre ou les affermer par des fondés de pouvoirs.

* Il est hors de doute que ces biens sont compris parmi les biens ayant fait l'objet des Iradés en question.

" Tous les différends ou litiges qui surviendraient dans l'interprétation ou l'application des stipulations précédentes seront réglés par un arbitrage à La Haye, en vertu d'un compromis à conclure.

" Quant aux biens du domaine privé de l'Etat ottoman, sis dans les territoires cédés, la propriété en étant réclamée par les deux Gouvernements, les parties contractantes ont convenu de soumettre également cette question à un tribunal arbitral à La Haye, en vertu d'un compromis à conclure. Le nombre et l'étendue des propriétés en question se trouvent dans la liste jointe au présent traité ".

37.—Ici encore, cette liste renferme l'énumération presque complète des " biens qui ont passé de la Liste civile à l'Etat ", et, ces biens sont *compris* parmi les " Biens du Domaine privé de l'Etat ottoman ".

Les observations, faites ci-dessus (*b*) à l'égard du Traité d'Athènes, étant en majeure partie applicables au Traité de Stamboul, le soussigné se borne à se référer à ces observations.

(*d*) Traités ayant mis fin à la guerre générale.

38.—Les dispositions invoquées de ces Traités sont conçues en termes sensiblement similaires.

En bref et généralement, elles portent que les Puissances alliées entreront en possession des biens appartenant aux Souverains et familles souveraines des Etats ennemis et situés dans les territoires détachés de ces Etats, et que ceux-ci paieront aux dits Souverains et familles souveraines la valeur des biens ainsi acquis par les Puissances alliées.

Il suffit d'observer ici que ces dispositions concernent des biens *appartenant* aux Souverains et familles souveraines ci-dessus désignés.

Or, dans le présent débat, il s'agit de biens qui, en vertu des Iradés de 1908 et 1909, *avaient cessé d'appartenir* au Souverain de Turquie.

Invoquer, à l'appui de la thèse des héritiers, les susdites dispositions, c'est évidemment donner effet à une pétition de principe.

39.—De l'avis du soussigné, l'étude, qui vient d'être faite, suprà Nos. 23 à 38, démontre que la base même de la thèse des héritiers est dépourvue de toute consistance.

C'est donc à titre purement subsidiaire que le soussigné examinera l'argumentation émise, dans la thèse des héritiers, en ce qui touche la validité des Iradés de 1908 et 1909.

B.—LA VALIDITÉ DES IRADÉS DE 1908 ET 1909.

40.—Ici, une double observation préalable s'impose:

(*c*) La validité des Iradés de 1908 et 1909 est consacrée par les Traités échangés entre la Turquie et les Puissances balkaniques en 1913–1914.

Cette consécration découle, incontestablement, des textes précités de ces Traités.

Si donc,—réserve étant faite du décret-loi du 8 Janvier 1920 dont il sera traité plus loin—, *les Iradés étaient valides dans les relations entre les parties aux susdits Traités, pourquoi ne le seraient-ils pas dans les relations entre les parties au Traité de Lausanne?*

Il ne semble guère que l'on puisse valablement prétendre que, valides en 1913–1914, les Iradés ne l'étaient pas en 1923.

(*b*) Mais, le Traité de Lausanne a, lui aussi, consacré la validité des Iradés.

Il l'a consacrée par l'alinéa 3 de son article 60, qui se réfère au Traité d'Athènes et *qui implique nécessairement la reconnaissance de la validité des Iradés par la Délégation turque elle-même*.

Il l'a consacrée par l'alinéa 2 de cet article.

Cet alinéa serait, en ce qui touche les Iradés, tenu pour inexistant si la validité des Iradés pouvait être mise en question.

Or, on ne saurait prétendre que telle clause toujours en vigueur d'un Traité constituant une loi internationale puisse être tenue pour inexistante.

Et, c'est pour avoir constaté la validité des Iradés que le Tribunal Arbitral Mixte anglo-turc, dans son jugement du 16 Décembre 1930, a notamment formulé, à bon droit, le motif suivant:

" Attendu que . . . . lesdits droits (les droits exercés par le Gouvernement britannique sur les biens en litige) ont leur source juridique *dans un acte translatif accompli par l'Etat turc dans la plénitude de sa souveraineté et sanctionné par les dtspositions de l'article 60 du Traité de Lausanne*, revêtant ainsi la légitimité qui appartient aux actes accomplis selon le droit des gens . . . . ".

41.—Mais, indépendamment de leur consécration par les Traités sus-mentionnés, et en les considérant sous l'angle du droit turc lui-même, *les Iradés étaient parfaitement valides*.

C'est ce que le soussigné se propose de démontrer en étudiant chacun des arguments avancés pour établir la prétendue invalidité des Iradés, et en exposant la condition de ceux-ci, leur véritable condition, individuelle ou commune, à l'égard du droit turc.

42.—Abstraction étant faite des détours jadis usités en Turquie, spécialement dans les relations entre le Souverain et les ministres qui n'étaient que ses créatures, l'Iradé de 1908 était *un acte de réparation*, consenti par Abdul-Hamid II à son peuple.

Comme il a été dit suprà, N° 14, les Sultans de Turquie se considéraient comme les maîtres absolus des biens du Domaine public.

Mais, rares sont les Sultans qui, à l'égal du Sultan Abdul-Hamid II, aient disposé de ces biens à leur profit.

Les accaparements et usurpations, pratiqués sous le règne de ce Sultan étaient de notoriété publique, et, il en est témoigné, en termes généraux, dans le Fetva* (sentence) du Cheikh-ul-Islam en date du 7 Rébi-ul-Akhir 1327 (14 Avril 1325) (26 Avril 1909), à la suite duquel le Sultan Abdul-Hamid II a été déposé par décision unanime de l'Assemblée nationale ottomane, composée des membres du Sénat et de la Chambre des Députés.

Etant *un acte de réparation*, l'Iradé de 1908 ne peut donc être régi par les dispositions relatives aux cessions de biens, mais par celles qui concernent le " Gassb ", c'est-à-dire l'usurpation du bien d'autrui.

43.—Le transfert énoncé dans l'Iradé de 1908, n'étant qu'une *restitution*, ne pouvait pas être et n'était pas subordonné à une condition quelconque.

Spécialement, *il n'avait pas pour condition* la conclusion d'un emprunt de 1.000.000 livres turques devant servir au paiement des dettes de la Liste civile.

Pour s'en convaincre, il suffit de lire le " Mazbata "† (procès-verbal) du Conseil des Ministres du 1/13 Septembre 1908 prenant acte du transfert ordonné.

En effet, il ressort des plus clairement de ce Mazbata que ce n'est pas le Sultan lui-même, mais le Ministère de la Liste civile qui, à la suite d'un Iradé *antérieurement promulgué* et relatif à ce transfert, a pris l'initiative de *requérir* ledit emprunt, ayant estimé que la Liste civile n'avait pas la possibilité de payer ses dettes.

Il ressort également dudit Mazbata que cette *requête* a été agréée par le Sultan comme par le Conseil des Ministres, mais il n'en ressort nullement que l'un ou l'autre ait considéré l'emprunt comme la *contre-partie*, comme la *condition* du transfert susdit, ni que le Conseil des Ministres ait contracté un *engagement* à l'égard de cet emprunt.

En fait, les dettes de la Liste civile ont fait l'objet d'un examen minutieux, effectué par les Services compétents de l'Etat, et, pour le paiement de leur montant réel, ainsi déterminé, des dispositions ont été prises dans la loi de finances de l'année 1325 (1909–1910) et dans les lois de finances des années ultérieures.

44.—A aucun titre, l'Iradé de 1909 n'était une mesure de confiscation.

Il ne l'était pas, si l'on considère que les biens qui en faisaient l'objet avaient été légitimement acquis.

Il ne l'était pas, si l'on considère que ces biens avaient été illégitimement acquis.

Dans le premier cas, le Sultan Mehmed Réchad V, successeur d'Abdul-Hamid II, avait, pour la raison indiquée *suprà*, N° 16, le droit de s'approprier lesdits biens ou d'en disposer en faveur de l'Etat.

Dans le deuxième cas, le Sultan Mehmad Réchad V avait le devoir de les restituer à la nation, complétant ainsi l'acte partiel de réparation, qu'avait accompli son prédécesseur par l'Iradé de 1908.

Dans les deux cas, c'est le Sultan Abdul-Hamid II qui avait fait acte de confiscation en faisant inscrire à son propre nom des biens qui devaient être dévolus à son successeur ou maintenus à la nation.

Dans les deux cas, l'Iradé de 1909 était un acte de " déconfiscation ".

Pas plus que la loi de la Grande Assemblée Nationale de Turquie du 3 Mars 1924, déjà mentionnée, *suprà* N° 18, il ne constituait donc un acte de confiscation.

45.—L'Iradé de 1909, nonobstant le généralité de ses termes, s'appliquait à des biens tout autres que ceux dont le transfert avait été ordonné par l'Iradé de 1908.

La différence entre les objets respectifs de ces Iradés ressortira de l'exposé qui sera fait *infrà* N° 47.

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* V. Nouveau Dustour (Recueil des Lois et Décrets de l'Empire ottoman), Tome I, page 166.

† V. Nouveau Dustour, Tome I, pages 76 et 77.

Mais, dès à présent et quoi qu'on en ait dit, le soussigné croit pouvoir affirmer que cette différence apparaît clairement à la lecture des listes que la Délégation turque a officiellement communiquées à la Conférence de Lausanne et qui indiquent les biens transférés en vertu de chacun des Iradés.

Les termes généraux de l'Iradé de 1909 ne peuvent donc être invoqués pour prétendre que l'Iradé de 1908 n'avait pas et n'avait pas eu d'existence légale.

46.—L'Iradé de 1908 ni l'Iradé de 1909 n'ont été soumis aux délibérations des Chambres.

Ils ne l'ont pas été, parce que le vote des Chambres n'était pas nécessaire pour des actes qui, comme lesdits Iradés, comportaient l'abandon de biens au profit de l'Etat.

Mais, ils n'en faisaient pas moins partie de la législation ottomane.

Ils en faisaient partie tout comme bien d'autres textes, antérieurs ou postérieurs à l'année 1908, qui n'avaient pas été déférés aux délibérations des Chambres.

Ils en faisaient partie en vertu de la loi de finances, qui, chaque année, portait en annexe un Tableau C, dans lequel étaient désignés les textes ayant force de loi pour la perception des recettes de l'Etat.

Dans ce Tableau C, qui était prévu dans la loi de finances et faisait corps avec elle, figuraient chaque année *les documents basés sur les Iradés et énonçant respectivement l'ensemble des transferts ordonnés par les Iradés.*

Les inscriptions ainsi faites au Tableau C constituaient des *actes de puissance publique*, accomplis par le pouvoir législatif, contre lesquels *il n'existait nulle voie de recours devant une juridiction quelconque.*

Le recours contre ces inscriptions était impossible autant qu'il l'est contre la loi précitée du 3 Mars 1924.

47.—Les Iradés de 1908 et 1909 ont eu leur plein effet dès leur promulgation.

De cette exécution effective de la teneur des Iradés, les preuves abondent.

En voici quelques-unes:

(*a*) L'ouverture de la première session du Parlement ottoman ayant eu lieu en Décembre 1908, le Gouvernement alors en fonctions lui soumit, peu après, un projet de budget, dans lequel étaient prévues, en un chapitre spécial de la Partie Recettes, les Ltq.404.347 représentant, pour l'année en cours, le revenu des biens dont le transfert avait été ordonné par l'Iradé de 1908*.

Ce projet ayant été soumis à la Commission financière de la Chambre des Députés, cette Commission ajouta audit chapitre *un deuxième chapitre* portant en recette *les Ltq.215.886 représentant, également pour l'année en cours, le revenu des biens dont le transfert avait été ordonné par l'Iradé de 1909**.

(*b*) Le budget du Ministère des Finances, afférent à l'année 1325 (1909–1910), énonçait, dans son chapitre 20, au titre des traitements et frais des fonctionnaires chargés de la gestion de la plupart des propriétés transférées de la Liste civile et autres, un crédit de Ltq.145.438 et 81 piastres.

(*c*) Le budget de même année du Ministère des Forêts et Mines portait, dans son chapitre 8, article 6, un crédit de Ltq.3.994 et 44 piastres pour les allocations des fonctionnaires qui étaient employés aux forêts transférées de la Liste civile.

(*d*) Au budget des recettes de la dite année, étaient portés en recettes, en chapitres distincts, les montants ci-dessus désignés (*a*).

(*e*) L'article 26 de la loi de finances de l'année 1326 (1910–1911) portait notamment que le Gouvernement était autorisé à installer des immigrés et des tribus nomades dans les fermes transférées de l'ex-Sultan, ou à concéder ces fermes aux cultivateurs, ou à les donner en location à des sociétés ottomanes en vue de les mettre en valeur et de les vendre ultérieurement, en parcelles, à des sujets ottomans.

(*f*) Le budget du Ministère des Finances de l'année 1326 portait, en son chapitre 8, art. 17, un crédit de Ltq.20.799 et 60 piastres pour les travaux des quais de Kadi-Keuy qui, avant l'Iradé de 1909, faisaient partie du Domaine impérial.

(*g*) Le même budget portait, en son chapitre 12, art. 16 un crédit de Ltq.20.000 pour distribuer des semences aux cultivateurs résidant dans des propriétés transférées de la Liste Civile.

(*h*) Le budget des recettes de la dite année portait, au chapitre 4 de sa Section V, une prévision de recettes de Ltq.62.513, provenant des bateaux naviguant sur l'Euphrate et le Tigre, lesquels bateaux avaient été transférés de la Liste civile à l'Etat.

* V. Rapport général de la Commission financière de la Chambre des Députés, Partie Recettes, Session 1324–1325 (1908–1909), page 102.

(*i*) L'article 21 de la loi de finances de l'année 1327 (1911–1912), modifiant les termes de l'article 26 précité de la loi de finances de l'année 1326, précisait notamment que, jusqu'au paiement intégral des sommes dues par les cultivateurs, auxquels avaient été concédés des terrains transférés de la Liste civile, les soldes dûs seraient régis par les lois relatives aux nantissements et aux ventes à réméré*.

(*j*) Le décret-loi du 8 Janvier 1920 lui-même,—dont l'autorité est cependant nulle, comme il sera établi ci-après—, constatait, en son article 1er, l'existence juridique des Iradés. Il constatait, en outre, en ce même article et dans les articles 2 et 3, la pleine exécution des dispositions des Iradés.

Ainsi, il est démontré que l'Etat ottoman a fait effectivement *acte de propriétaire* des biens qui lui avaient été transférés par les Iradés de 1908 et 1909.

48.—La loi ottomane elle-même, commandant ou impliquant, par ses dispositions multiples et réitérées, l'appropriation par l'Etat des biens ainsi transférés, ne peut pas être tenue en échec par le fait que les rectifications requises n'ont pas toujours été effectuées dans les registres cadastraux.

Telle étant la loi, ces rectifications pouvaient et *peuvent* être faites à tout moment.

Et, le simple retard dans leur exécution ne saurait évidemment être invoqué pour prétendre que la loi est inopérante.

L'article 1737 du Médjellé (Code civil ottoman en vigueur jusqu'en 1926) et les dispositions des lois foncières, cités dans la thèse des héritiers, sont complètement étrangers au cas présentement considéré, où il s'agit de l'application *automatique de la volonté de la loi*,—comme dans les cas de successions en déshérence, de destitution des possesseurs de terres domaniales qui ne remplissent pas les obligations stipulées au Code des Terres, ou d'annulation de concessions minières ou autres.

49.—Le décret-loi du 8 Janvier 1920, promulgué par le Sultan Mehmed Vahd-ed-Dine VI, était de nulle autorité juridique, et ce notamment pour les raisons suivantes:

(*a*) Le décret-loi était contraire à la Constitution ottomane.

En effet, l'article 36 de cette Constitution, dont s'est prévalu le Sultan pour promulguer son décret-loi, est conçu en ces termes:

" Dans les temps où l'Assemblée Générale (Sénat et Chambre des Députés) n'est pas réunie, *s'il surgit une nécessité pressante de prémunir l'Etat d'un danger ou de sauvegarder la sécurité publique*, et dans le cas où l'on n'aurait pas le temps de convoquer et de réunir l'Assemblée pour délibérer sur la loi nécessaire à cet effet, les décisions qui, à la condition de n'être pas contraires à la Constitution, seront prises par le Conseil des Ministres, auront, par Iradé impérial, provisoirement force de loi jusqu'à la décision qui sera prise à la réunion de la Chambre des Députés.

" Il est nécessaire que les susdites décisions soient communiquées à la Chambre des Députés lors de sa première réunion "†.

Ainsi, les lois provisoires (décrets-lois) ne pouvaient être promulguées que " s'il surgissait une nécessité pressante de prémunir l'Etat d'un danger ou de sauvegarder la sécurité publique ".

Telle était la condition *première* et fondamentale de la légalité des décrets-lois.

Les décrets-lois promulgués, sans qu'il eût " surgi la nécessité pressante de prémunir l'Etat d'un danger ou de sauvegarder la sécurité publique ", étaient donc anti-constitutionnels.

Or, il ne viendra à l'esprit de personne que le décret-loi du 8 Janvier 1920, ordonnant le retour à la Liste civile des biens et propriétés qui avaient été transférés et abandonnés à l'Etat par les Iradés de 1908 et 1909, satisfaisait à la condition impérativement stipulée à l'art. 36 sus-mentionné.

Il est vrai que certains autres décrets-lois ne satisfaisaient pas non plus à cette condition.

Mais, comme le dit en substance l'art. 15 du Médjellé, " Ce qui est contraire à la loi ne peut servir de précédent ".

Il appartient à tous intéressés d'exciper de l'inconstitutionnalité évidente du décret-loi du 8 Janvier 1920 et de son caractère purement arbitraire.

(*b*) Le décret-loi n'a été publié ni dans le territoire soumis à la juridiction du Gouvernement de la Grande Assemblée Nationale de Turquie, ni dans les territoires occupés par les Puissances alliées.

Or, la publication des lois dans les différentes parties de l'Empire ottoman était impérativement prescrite dans la loi du 18 Mai 1327 (1911)‡, article 3.

* V. Nouveau Dustour, Tomes I, II et III, *passim*.

† Le texte ci-dessus est la traduction presque entièrement littérale du texte turc.

‡ V. Nouveau Dustour, Tome III, pages 417 et 418.

Et, le décret-loi lui-même dispose, en son article 5, qu'il entrera en vigueur *à partir de la date de sa publication*.

(*c*) Le Gouvernement de la Grande Assemblée Nationale de Turquie n'a, à aucun moment, tenu pour valable le décret-loi du 8 Janvier 1920.

Il l'a même *radicalement* annulé par la loi du 3 Mars 1924.

(*d*) Les Hauts-Commissaires de Grande-Bretagne, de France et d'Italie, sous la protection desquels le Sultan Mehmed Vahd-ed-Dine VI exerçait une souveraineté nominale, presque confinée aux limites de son palais, ont formellement protesté contre le décret-loi.

(*e*) Même à défaut des constatations ci-dessus, le décret-loi du 8 Janvier 1920 ne pouvait avoir aucun effet dans les territoires occupés par les armées alliées.

En effet, il est hors de toute contestation, qu'en territoire occupé, la souveraineté de l'Etat dont relevait ce territoire est *suspendue*, et qu'à sa souveraineté devenue théorique se substitue *la souveraineté de fait* de l'Etat occupant.

En raison de cette souveraineté de fait, l'application, en territoire occupé, de toute nouvelle législation de l'Etat souverain en droit est subordonnée au consentement exprès de l'Etat occupant, qui peut même modifier, selon ses exigences, la législation déjà en vigueur au moment de l'occupation.

A ces principes, qui sont de droit commun international, l'article 9 du Protocole XII du Traité de Lausanne, invoqué dans la thèse des héritiers, ne saurait porter aucun préjudice—constituant, dans un cas déterminé, l'application de ces mêmes principes.

CONCLUSION.

Pour les motifs exposés dans la présente Consultation, le soussigné estime que les réclamations, formulées par les héritiers du Sultan Abdul-Hamid II quant aux biens et propriétés visés à l'article 60, alinéa 2 du Traité de Lausanne, ne sont pas fondées en droit.

(Signé): B. HALADJIAN,
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Anciennement: avocat à Constantinople.
avocat-conseil du Conseil international de la Dette Publique Ottomane.
Député de Constantinople.
Membre et Président de la Commission financière de la Chambre des Députés.
Ministre ottoman du Commerce et des Travaux publics.
Délégué ottoman à la Commission financière des Affaires Balkaniques.
Membre de la Cour Permanente d'Arbitrage de La Haye.

ANNEXE I.

(Traduction.)

Procès-Verbal du Conseil des Ministres en date du 1er Septembre 1324 (13 Septembre 1908).*

En vue d'aider à l'établissement de l'équilibre entre les recettes et les dépenses de l'Etat et de faciliter la conclusion de l'emprunt projeté, un Iradé impérial *ayant été* promulgué pour le transfert et l'abandon au Ministère des Finances de terres et propriétés impériales,—dont liste jointe—, administrées par le Ministère de la Liste civile et rapportant un revenu annuel plus de 400.000 livres turques, et, cet Iradé impérial *ayant été* transmis au Ministère de la Liste civile, ce dernier, dans son rapport à Sa Majesté Impériale, a soumis les observations ci-après:

Une partie des propriétés impériales sont des propriétés *ab antiquo;*

Un grand nombre des propriétés impériales ont été enregistrées au nom de Sa Majesté Impériale, moyennant paiement de leur contre-valeur au Ministère des Finances ou à leurs propriétaires, uniquement dans le haut dessein d'empêcher leur appropriation par des étrangers et de faire prospérer le pays;

pour la mise en valeur de ces propriétés, il a été dépensé des sommes plus élevées que leur prix d'achat, et, des établissements de bienfaisance et des écoles y ont été créés;

du chef, des traitements et autres, afférents à la Liste civile et aux propriétés impériales, la Liste civile a des dettes qui s'élèvent à 1.150.000 livres turques;

même si ces dettes étaient liquidées et partiellement ajournées, leur paiement nécessiterait au moins 850.000 livres turques;

il est impossible à la Liste civile de se procurer directement cette somme;

les propriétés et terres abandonnées et accordées au Ministère des Finances rapportent un revenu annuel de plus de 400.000 livres turques;

en outre, au titre des dimes de ces terres, la Liste civile perçoit seulement 1 sur 10, tandis que, à la suite de leur abandon au Ministère des Finances, cet impôt sera perçu à raison de 1 sur 8; de ce chef, le Ministère des Finances aura un profit supplémentaire de 40 à 50.000 livres turques;

en conséquence, le Ministère de la Liste civile *a prié* Sa Majesté Impériale de majorer de 1.000.000 livres turques le montant de l'emprunt projeté par l'Etat, et de faire remettre cette somme (de 1.000.000 livres turques) à la Liste civile, la Sublime-Porte ayant à déterminer l'affectation nécessaire au service de l'intérêt et de l'amortissement y afférent.

Cette *requête* ayant été approuvée par Sa Majesté Impériale, nous avons pris connaissance du Tezkéré-i-Houssousié (lettre du Secrétariat du Sultan) en date du 13 Châban 1326 (25 Août 1324) (6 Septembre 1908) faisant connaître l'Iradé impérial relatif à son exécution.

L'abandon au Ministère des Finances des susdites propriétés impériales, administrées par la Liste civile et rapportant un revenu annuel dépassant 400.000 livres turques, constitue un nouveau bienfait s'ajoutant à tous ceux que Sa Majesté Impériale a toujours accordés pour l'amélioration des Finances de l'Etat.

En raison de cet abandon, Sa Majesté Impériale s'est acquis l'immense et infinie gratitude de son peuple.

Nous réitérons à cette occasion nos prières pour Sa Majesté Impériale et La prions d'agréer nos hommages et notre profonde reconnaissance.

Pour ce qui concerne la somme de 1.000.000 livres turques, dont la Liste civile a besoin pour régler ses dettes,—eu égard à ce que le revenu annuel desdites propriétés dépasse 400.000 livres turques—, *il sera possible* de conclure un emprunt de 1.000.000 livres turques en prélevant sur ce montant (de 400.000 livres turques) une somme de 50.000 livres turques pour le service de l'intérêt et de l'amortissement de cet emprunt.

Il a été délibéré de charger le Ministère des Finances de *s'aboucher* avec la Banque Ottomane pour le prêt de 1.000.000 livres turques†.

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* V. Nouveau Dustour, Tome I, pages 76 et 77.
† Ce Procès-Verbal a été approuvé par Iradé de même date.

ANNEXE II.

(Traduction.)

Fetva du Cheikh-ul-Islam en date du 14 Avril 1325 (26 Avril 1909).*

Question.

Si Zeïd†, Imam (Commandeur) des musulmans, a supprimé dans les livres du Chéri (loi musulmane) diverses dispositions importantes;

S'il a interdit et brûlé ces livres;

S'il a dilapidé le Beït-ul-Mal (Domaine public) et l'a possédé contrairement au Chéri;

S'il a tué, emprisonné et exilé ses sujets sans motif légal;

S'il s'est rendu coutumier d'autres exactions;

Si, après avoir juré de revenir au bien, il se parjure et continue à être cause de grands troubles de nature à porter gravement atteinte aux biens des musulmans et aux intérêts de l'Islam; s'il provoque des tueries;

Si les populations musulmanes, triomphant de l'influence néfaste de Zeïd, font parvenir, des différentes parties de l'Etat, des messages indiquant qu'elles le considèrent comme déchu;

Si le maintien de Zeïd est une cause certaine de mal et si sa déchéance peut être une cause de bien;

La décision, par laquelle les " Erbab-i-hall-ou-Akd " et les " Evlia-i-Oumour " (personnes ayant pouvoir de juridiction) auront préféré l'une ou l'autre des solutions suivantes: proposer à Zeïd de renoncer à sa qualité d'Imam et de Sultan ou le déposer, est-elle exécutoire obligatoirement?

* V. Nouveau Dustour, Tome I, page 166.
† Zeïd signifie Primus et désigne le Sultan Abdul-Hamid II.

Réponse.

Elle l'est*.

Fait par l'humble Es-Seïd Mehmed Zia-ed-Dine Qu'Allah lui soit miséricordieux.

* En Turquie, la déposition des Sultans était généralement précédée d'un Fetva du Cheikh-ul-Islam.

ANNEXE III.

(Traduction.)

Cararnamé (décision) de l'Assemblée Générale Nationale en date du 14 Avril 1325 (26 Avril 1909).*

Le mardi 7 Rébi-ul-Akhir de l'année 1327—14 Avril 1325 (26 Avril 1909), à 6 heures et demie (à la turque), lecture ayant été faite par devant le Sénat et la Chambre des Députés, réunis en Assemblée Générale Nationale, du Fetva du Chéri, signé par le Cheikh-ul-Islam, Mehmed Zia-ed-Dine Effendi, et, des deux alternatives prévues dans ce Fetva, la déposition ayant été choisie par une décision motivée prise à l'unanimité, le Sultan Abdul-Hamid II a été déposé du Khalifat de l'Islam et du Sultanat ottoman, et, l'héritier légitime, S. A. I. Mehmed Réchad Effendi, a été élevé à la dignité de Khalife et de Sultan, sous le nom de S. M. I. le Sultan Mehmed V.

* V. Nouveau Dustour, Tome I, page 167.

ANNEXE IV.

(Traduction.)

Rapport général de la Commission financière de la Chambre des Députés Session 1324–1325 (Décembre 1908–Août 1909).

Partie Recettes.

Page 102.

Evaluations de la Commission.	*Evaluations du Gouvernement.*	*Nature des Recettes.*	*Art.*	*Chap.*	*Sect.*
Ltq.	Ltq.				
404·347	404·347	Produit du Domaine public antérieurement transféré de la Liste civile.	1	10	1
215.886	—	Produit du Domaine public ultérieurement transféré de la Liste civile.	2	11	1

ANNEXE V.

(Traduction.)

Loi provisoire (décret-loi) du 8 Janvier 1336 (1920).

Article 1.—Les propriétés, les terres, les fermes, les établissements et les concessions qui ont été transmis par registre par la Liste civile au Ministère des Finances *en vertu* des Iradés impériaux datés du 1er Septembre 1324 (1908) et du 21 Avril 1325 (1909) ont été remis et restitués à la Liste civile à l'exception de ceux qui ont été *vendus, transférés* et *distribués* aux immigrés par le Ministre des Finances. Le droit de recourir aux tribunaux de ceux qui prétendent y avoir des droits est réservé.

Article 2.—Les revenus des propriétés, terres, établissements et autres mentionnés ci-haut, perçus jusqu'à présent par le Ministère des Finances *ne seront pas rendus*. Aussi, les revenus et les dépenses, qui seront constatés jusqu'à la fin de l'année financière 1335 (1er Mars 1920) *appartiendront* (et incomberont) au Ministère des Finances.

Article 3.—Les dispositions des Conventions faites par le Ministère des Finances concernant les propriétés, terres, fermes et autres, *seront en vigueur et valables* jusqu'à l'expiration de leurs délais. Cependant, après l'expiration de l'année financière courante, les revenus et les dépenses provenant de l'application de ces conventions appartiendront (et incomberont) à la Liste civile.

Article 4.—Le Ministère des Finances est chargé de l'application du présent Cararnamé (décret-loi).

Article 5.—Les dispositions du présent Cararnamé sont en vigueur à partie de la date de sa *publication*.

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19071/1/36 [No 53] Enclosure.

No. 46. Paris, 12th September, 1936.

OPINION

relating to the Claims of the Heirs of the Sultan Abdul Hamid II in respect of the property and possessions referred to in Article 60, paragraph 2, of the Treaty of Lausanne, dated 24th July, 1923.

INTRODUCTION.

1. Sultan Abdul Hamid II was Sovereign of the Ottoman Empire and Khalif of the Sunnite Mohammedans, from 1876 to 1909.

In July, 1908, as the result of the Young Turk Revolution, he was forced to accept a constitutional form of government.

He was deposed in April, 1909, and died in 1918.

2. Sultan Abdul Hamid II had owned properties and possessions of considerable extent and of diverse nature.

These properties and possessions were scattered throughout the territory of the Ottoman Empire, and the greater part of them—acquired in the reign of Abdul Hamid II—was inscribed in the cadastral registers in the name of Abdul Hamid on the condition that they should descend to his children.

3. All the above mentioned property and possessions were managed by a special administration known as the " Haziné-i-Hassa-i-Chahané Nézaréti ".

The literal translation of this expression is " Ministry of the Imperial Private Treasury ".

But in practice the expression " Ministry of the Imperial Civil List ", or—more shortly—the expression " Ministry of the Civil List " was used to designate the " Haziné-i-Hassa-i-Chahané Nézaréti ".

And by " Civil List " was understood the entirety of the property and possessions of the Sultan, including therein the Imperial allowance.

The Ministry of the Civil List had the status of a public department. In this capacity legal provisions relating to stamp duties affecting public administrations were applicable to it.

Its Head did not have a seat on the Council of Ministers.

4. Previous to his deposition, Sultan Abdul Hamid II had, by an Iradé* (Imperial Decree) of the 26th August, 1324, (8th September, 1908), ordered the transfer and surrender to the Ottoman State of an important part of the lands and possessions managed by the Ministry of the Civil List.

5. After the deposition of Sultan Abdul Hamid II, his immediate successor, Sultan Mehmed Reshid V, had by an Iradé dated 20th April, 1325, (2nd May, 1909), ordered the transfer and surrender to the Ottoman State of the possessions, farms and mining concessions incorporated in the Imperial Estates since the year 1293 (1876) in the name of the ex-Sovereign, as well as various other possessions included in these Estates.

6. The property and possessions yielded to the Ottoman State in virtue of the Iradés of 1908 and 1909 and situate in certain territories detached from the Ottoman Empire are expressly referred to in paragraphs 2 and 3 of Article 60 of the Treaty of Lausanne.

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* By Iradés the sovereign will was most frequently manifested, particularly for the approval of the Laws and Regulations of the Empire.

The Iradés were registered in a special office, and transmitted to the services interested by the Secretariat of the Sovereign.

7. This Article is framed as follows:—

Article 60.

Les États en faveur desquels un territoire a été ou est détaché de l'Empire ottoman, soit à la suite des guerres balkaniques, soit par le présent Traité, acquerront gratuitement tous biens et propriétés de l'Empire ottoman situés dans ce territoire.

Il est entendu que les biens et propriétés dont les Iradés du 26 août 1324 (8 septembre 1908, du 20 avril 1325 (2 mai 1909) ont ordonné le transfert de la Liste Civile à l'État ainsi que ceux qui, au 30 octobre 1918, étaient administrés par la Liste Civile au profit d'un service public, sont compris parmi les biens et propriétés visés à l'ailinéa précédent, lesdits Etats étant subrogés à l'Empire ottoman en ce qui concerne ces biens et propriétés, les vakoufs constitués sur ces biens devant être respectés.

Le litige surgi entre le Gouvernement hellénique et le Gouvernement turc relativement aux biens et propriétés passés de la Liste Civile à l'État et situés sur les territoires de l'ancien Empire ottoman transférés à la Grèce, soit à la suite des guerres balkaniques, soit postérieurement, sera soumis, selon uncompromis à conclure, à un tribunal arbitral à La Haye, conformément au Protocole spécial nº 2 attaché au Traité d'Athènes du 1/14 novembre 1913.

Les dispositions du présent Article ne modifieront pas la nature juridique des biens et propriétés inscrits au nom de la Liste Civile ou administrés par elle et non visés aux alinéas 2 et 3 du présent Article.

Article 60.

The States in favour of which territory was or is detached from the Ottoman Empire after the Balkan Wars or by the present Treaty shall acquire, without payment, all the property and possessions of the Ottoman Empire situated therein.

It is understood that the property and possessions of which the transfer from the Civil List to the State was laid down by the Iradés of the 26th August, 1324 (8th September, 1908) and the 20th April, 1325 (2nd May, 1909), and also those which, on the 30th October, 1918, were administered by the Civil List for the benefit of a public service, are included among the property and possessions referred to in the preceding paragraph, the aforesaid States being subrogated to the Ottoman Empire in regard to the property and possessions in question. The Wakfs created on such property shall be maintained.

The dispute which has arisen between the Greek and Turkish Governments relating to property and possessions which have passed from the Civil List to the State and are situated in territories of the former Ottoman Empire transferred to Greece either after the Balkan wars, or subsequently, shall be referred to an arbitral tribunal at The Hague, in accordance with the special protocol No. 2 annexed to the Treaty of Athens, of the 1st–14th November, 1913. The terms of reference shall be settled between the two Governments.

The provisions of this Article will not modify the juridical nature of the property and possessions registered in the name of the Civil List or administered by it, which are not referred to in the second and third paragraphs above.

8. In execution of paragraph 2 of this Article, the succession States entered into possession of the property and possessions of which the above mentioned Iradés had ordered the transfer to the Ottoman State, as well as of the property and possessions which on the 30th October, 1918, were managed by the Civil List for the benefit of a public service.

9. But the heirs of Sultan Abdul Hamid II dispute the legitimacy of this entry into possession.

They claim, in consequence, the restoration of the property and possessions mentioned in paragraph 8 above or the payment of their value.

And in so far as such property and possessions are situated in territories placed under British Mandate, their claims are directed against His Britannic Majesty's Government.

10. According to the public certificate dated 9th Rébi-ul-Akhir, 1338 (1922), issued by the then competent religious authority in matters of succession, the heirs of the Sultan Abdul Hamid II are:

(*a*) The Princes Sélim, Abdul-Kadir, Ahmed, Burhan-ed-Dine, Abdur-Rahime, Nour-ed-Dine and Abid, his sons;

(*b*) The Princesses Zékié, Naïme, Naïlé, Chadié, Aïché and Réfia, his daughters;

(*c*) Mesdames Bédri Félek, Nadjié, Fatma, Emsal-Nour, Sazikié, Peyvesté, Muchfiké and Béhidjé, his wives.

Of these eight ladies, regarded as having been wives of the Sultan Abdul-Hamid II, the first three are dead, according to information recently furnished.

11. Having been consulted by the Treasury Solicitor acting on behalf of His Britannic Majesty's Government in the matter of the claims of the heirs of the Sultan Abdul-Hamid II, the undersigned after having examined the opinions which have been given in the matter of the succession to the Sultan as well as the documents which, directly or indirectly, affect the said claims considers it his duty to express the following opinion:

GENERAL OBSERVATIONS.

12. In order that the basic principle of the claim put forward by the heirs of the Sultan Abdul-Hamid II may be duly appreciated, it seems necessary to be in possession of precise information on the following matters:

(*a*) the form of government existing in Turkey prior to the Young Turk Revolution of July, 1908;

(*b*) The composition of the Imperial Estates;

(*c*) The manner of transmission of the Imperial Estates on the death of a Sultan, or following his deposition;

(*d*) The essential change introduced by Sultan Abdul-Hamid II in this manner of transmission, the beneficiaries and the value of this change.

(a) The form of Government existing in Turkey prior to the Young Turk Revolution of July, 1908.

13. Up to the revolution of July, 1908, and ignoring the few months during which the constitution promulgated in 1876 was applied, Turkey was a *despotic monarchy* in the full meaning of these words.

The Sovereign of Turkey exercised all the legislative power and all the executive power, and his influence over the judicial power itself was considerable.

Except in certain matters, the will of the Sovereign was the supreme law.

Being the supreme law, the will of the Sovereign was not in any way bound by the laws and regulations which he made.

The former, as well as the latter, were binding on Turkish subjects and sometimes on foreigners, but they did not bind the Sovereign in so far as his interests came into question.

Thus notably, and contrary to what is said in the Opinion of Monsieur Politis dated 17th January, 1934, paragraph 7, *in fine*—based on an inexact declaration of the Ottoman Minister of the Cadastre, dated 8th October, 1921, annexed to that Opinion—the possessions of the Sovereign were not subjected to any tax*; and it was even sufficient that cattle liable to the annual tax should, at the date of collection, be driven on pasturages belonging to the Imperial Estates in order to prevent the Treasury exercising its rights†.

And furthermore, in the case of lands belonging to the Sovereign, the tithe payable by the peasants cultivating those lands was received, not by the Treasury, but for the personal account of the Sovereign‡ §.

(b) The Composition of the Imperial Estates.

14. In defining the Estates of the Sultans of Turkey it is important to avoid applying conceptions relating to the Estates of the Ancient Khalifs or of modern Sovereigns.

In Turkey, the Estates of the Sovereign had a very especial character.

The Turkish Sovereign owned in the first place, possessions acquired by reason of his accession to the throne.

These possessions included the " Emlak-i-Hakanié " (possessions of the Sovereign).

Under the reign of the last Sultans, the Sovereign also enjoyed an imperial allowance.

But his right of disposition was not limited to these two classes of property.

The Sovereign of Turkey was the absolute master of the property and resources of the State, in so far as they were not alienated or granted away—and, sometimes, even if they had been so alienated or granted.

Thus " Miri " lands (lands of the Public Estates) were acquired by the Sovereign‖ simply by his Iradé; and in so far as anything was paid in respect of such acquisitions, the sums transferred were insignificant, having no relation to the value of the lands acquired.

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* Cf. Young, Corps de Droit ottoman, Vol. VI, page 120, & Morawitz, Les Finances de la Turquie, page 74.

† Cf. Morawitz, op. cit., page 81.

‡ Cf. Heidborn, Les Finances ottomanes, page 223.

§ In the above-mentioned declaration of the Minister of the Cadastre, it is stated that lawsuits concerning property acquired by Sultan Abdul-Hamid II, just as lawsuits relating to goods belonging to private individuals were within the competence of the ordinary tribunals.

It should be noted that those who dared commence legal proceedings against the Sultan were rare indeed, and that on the other hand—the ordinary tribunals were all equally competent in every kind of civil dispute arising between State Departments and private individuals.

‖ Cf. Heidborn, op. cit., page 223.

Thus, the Sovereign *appropriated to himself* mining and other concessions, always simply by his Iradé, and without having to comply with the obligations to which private individuals were subjected.

Thus, the Sovereign dipped at will into the public resources*—the revenues and produce of State loans—limiting himself only to the extent necessary to provide indifferently, and generally in a very imperfect fashion, for the services of the State.

He drew on these resources, either to provide for the enormous expenses of the Imperial Harem (gynaéceum) and of the Imperial Court, or for the building of expensive Palaces, or for gifts to his favourites and for the support of his innumerable spies, or again for the purchase of possessions which, as in the cases of the " Miri " lands and of the concessions above mentioned, were added to the " Emlak-i-Hakanié ".

Every distinction between the Imperial Estates and the Imperial revenues, on the one hand, and the public estates and resources, on the other hand, was, therefore illusory, the latter merging into the former at the will of the Sovereign.

(c) The manner of Transmission of the Imperial Estates.

15. The devolution of the property of the Sultan was governed by principles, which, entirely different from the Mohammedan common law, were peculiar to Turkey. Contrary to the opinion expressed by Professor Sabonadière in 1921, one cannot then determine the conditions of this devolution by the principles of that common law, nor by reference to what might have happened on the death of the prophet Mohammed or of the Khalifs *who were not at the same time Khalifs and Sultans of Turkey*.

16. In Turkey, it was established that, on the death or deposition of a Sultan, his successor took possession of all the movable and immovable property which had belonged to the deceased or deposed Sultan.

For, the latter had held it in his capacity as Sultan, and only in his capacity as Sultan.

It follows that no distinction was made in reference to this property according to whether it had constituted the personal property of the ex-Sultan or the property of the Crown.

If the new Sultan was of a generous nature he left to the family of his predecessor some part of the fortune of the latter. But, generally, all the Imperial Princes, including the heir apparent, lived obscurely on the allowance which was made them by the reigning Sovereign.

Thus, Sultan Murad V, who succeeded in 1876 to his uncle Sultan Abdul-Aziz, was on his succession a relatively poor man although he was the son of the Sultan Abdul-Mejid.

Also Sultan Abdul-Hamid II, who succeeded in the same year to his brother Murad V, was on his succession, very far from rich.

Also Sultan Mehmed Reshid V, who succeeded his brother Abdul-Hamid II in 1909, was on his succession a man owning very little property.

And it was quite exceptional for an Imperial Prince to possess a substantial personal fortune. But this fortune was always sufficiently small not to excite the jealousy or the fear of the reigning Sultan.

(d) The Essential Change introduced by the Sultan Abdul-Hamid II in the manner of the Transmission of the Imperial Estates; the Beneficiaries and the Value of this Change.

17. Sultan Abdul-Hamid II was not ignorant of the fact that at his disappearance, the immense patrimony which he had amassed, to the detriment of the public Estates and often of private individuals, would inevitably pass, by virtue of the fundamental rule stated above, into the possession of his successor, and that his own descendants would be reduced to living on the allowances of the latter.

Anxious for the future of *his children*, he undertook to transgress, on a very large scale, this century old rule and in consequence he instructed the competent administrations to register in his own name the numerous and considerable possessions that he had acquired and to specify in their registers that the possessions so entered were, at his death, to pass to *his children*.

If there was any need of it, this order by itself would prove the existence of the above mentioned rule.

* Cf. Morawitz, op. cit., pages 49, 52, 67, 68.

18. Disposing of the sovereign power, Sultan Abdul-Hamid II could give such an order which entailed a material alteration in the conditions of transmission of the Imperial Estates.

But it was equally competent to those who, after him, should be invested or should believe themselves invested with the sovereign power, not to observe this order and to re-establish the old rule or to modify it.

For instance, Sultan Mehmed Reshid V made use of this power in transferring and surrendering to the Ottoman State the possessions inscribed in the name of Sultan Abdul-Hamid II and incorporated in the Civil List since 1876 (above paragraph 5).

Similarly, Sultan Mehmed Vahd-ed-Dine, VI, the successor to Mehmed Reshid V, so acted in reclaiming particularly the possessions which had been the subject of the Iradés of 1908 and 1909, in reclaiming them, *not at all for the children of Abdul-Hamid II*, but for himself in his capacity as Sultan and Head of the Imperial Family *alone* possessing the right to enjoy, administer and *dispose of* those possessions*.

Similar action was taken by the Grand National Assembly of Turkey, which, exercising the sovereign authority in the name of the Turkish Nation, made, in particular, by the law of the 3rd March, 1924, the following provisions:

> *Article 8. The immovable properties registered in the Tapou* (title of the cadastre) *in the names of persons having exercised the dignity of Padichah* (Sultan) *in the Ottoman Empire, and situated in the territory of the Republic of Turkey, are acquired by the nation.*
>
> *Article 9.* All the furniture of the palaces, Kiosks and other buildings belonging to the fallen Monarchy, the table services, the pictures, the works of art and all other objects to be found therein are acquired by the nation.
>
> *Article 10.* The immovables called " Emlak-i-Hakanié, which had been previously transferred to the nation, all the buildings belonging to the fallen Monarchy, the building of the old Treasury, the palaces, Kiosks, with all that they contain, as well as the other buildings or lands are acquired by the nation.

19. In the light of these observations, to which reference will be made as may be necessary in the course of the present Opinion, the Undersigned will now set out the substance of the case put forward by the heirs of Sultan Abdul-Hamid II and will examine it in detail.

THE CASE OF THE HEIRS.

20. The case of the heirs, which for the protection of differing interests, has been developed in the Opinions above referred to of M. Politis and of MM. Roguin et Pellis, may be summarized as follows:

Article 60 paragraph 2 of the Treaty of Lausanne does not *in absolute terms*, entitle the succession States to acquire without payment,—as in the case of the property and possessions of the Ottoman Empire,—the property and possessions of which the Iradés of 1908 and 1909 had ordered the transfer from the Civil List to the State, or the property and possessions which, on the 30th October, 1918, were administered by the Civil List for the benefit of a public service.

It provides only, and expressly, for the subrogation of these States to the Ottoman Empire in the case of the property and possessions included in the last two categories.

Being only *subrogated* to the Ottoman Empire, the said States cannot have more extensive rights than had the Ottoman Empire over the property in question.

Therefore, they can claim possession of this property if the Ottoman Empire was itself the owner. They cannot do so in the contrary case.

But the Ottoman Empire *was not the owner* of the property and possessions in question.

It was not the owner of these properties for the following several reasons:

The Iradé of 1908 was conditional on the raising of a loan of £T.1,000,000 for the purpose of the payment of the debts of the Civil List. Now this loan was not raised.

The Iradé of 1909, ordering the transfer to the State of the properties, farms and mining concessions taken in the name of the ex-Sultan, was nothing but a measure of confiscation of property belonging to another. Now every confiscation was forbidden by Ottoman law.

Moreover the very tenor of this Iradé of 1909, which does not refer to the Iradé of 1908, shows that the latter Iradé was not considered as having any existence in law.

* Cf. Opinion of MM. Rougin et Pellis, dated 10th August, 1925, pages 5, 9, 10, 31 and the text of the decree law of the 8th January, 1920.

To be valid in law, both of these Iradés should have been incorporated in the Ottoman legislation. This incorporation did not take place.

To be valid in fact, both Iradés should have been followed by acts putting their provisions into execution. No executory steps were taken after their promulgation.

In order that the transfers ordered should be effective, they should have been entered on the cadastral registers. This entry did not take place.

Finally, both Iradés were revoked by a decree law of the 8th January, 1920, promulgated in the reign of Sultan Mehmed Vahd-ed-Dine VI.

The two Iradés, being thus a dead letter from every point of view, cannot have created any right over the property and possessions in question for the benefit of the Ottoman Empire.

In consequence, these properties cannot have passed to the succession States, and ought to be returned to the recognized heirs of the Sultan Abdul-Hamid II, on the bare production of the documents of title establishing the right of ownership of that Sultan.

EXAMINATION OF THE CASE OF THE HEIRS.

21. As one sees, the crux of the whole case of the heirs is constituted by Article 60, paragraph 2, of the Treaty of Lausanne.

It will be well, therefore, to determine first of all the meaning of this clause.

A.—The meaning of Article 60, paragraph 2, of the Treaty of Lausanne.

Having regard to the importance of the discussion, it is well to reproduce here the text of the first and second paragraphs of Article 60, the last of these provisions expressly referring to the first.

Paragraph 1:

Les États en faveur desquels un territoire a été ou est détaché de l'Empire ottoman, soit à la suite des guerres balkaniques, soit par le présent Traité, acquerront gratuitement tous biens et propriétés de l'Empire ottoman situés dans ce territoire.

The States in favour of which territory was or is detached from the Ottoman Empire after the Balkan wars or by the present Treaty shall acquire, without payment, all the property and possessions of the Ottoman Empire situated therein.

Paragraph 2:

Il est entendu que les biens et propriétés dont les Iradés du 26 août 1324 (8 septembre 1908), du 20 avril 1325 (2 mai 1909) ont ordonné le transfert de la Liste Civile à l'État ainsi que ceux qui, au 30 octobre 1918, étaient administrés par la Liste Civile au profit d'un service public, sont compris parmi les biens et propriétés visés à l'alinéa précédent, lesdits États étant subrogés à l'Empire ottoman en ce qui concerne ces biens et propriétés, les vakoufs constitués sur ces biens devant être respectés.

It is understood that the property and possessions of which the transfer from the Civil List to the State was laid down by the Iradés of the 26th August, 1324 (8th September, 1908) and the 20th April, 1325 (2nd May, 1909), and also those which, on the 30th October, 1918, were administered by the Civil List for the benefit of a public service, are included among the property and possessions referred to in the preceding paragraph, the aforesaid States being subrogated to the Ottoman Empire in regard to the property and possessions in question. The Wakfs created on such property shall be maintained.

23. The simple perusal of these texts shows how far the case sustained by the heirs departs from the wording of the texts themselves.

The property and possessions in question in both paragraphs form, not three distinct categories, but one and the same category of property and possessions: the property and possessions belonging to the Ottoman Empire and situate in the detached territories.

Indeed, paragraph 2 provides, in the clearest way, that the property and possessions, designated therein, are *comprised* in the property and possessions referred to in the preceding paragraph.

But what are "the property and possessions referred to in the preceding paragraphs"?

They are "the property and possessions of the Ottoman Empire".

Hence it is evident that the property and possessions indicated in both paragraphs must have, in identical conditions, a common fate which, defined in the first paragraph, is their acquisition without compensation by the successor States.

24. This statement, which is not even an interpretation, is fully confirmed by the expression "ces biens et propriétés" twice employed in paragraph 2, *in fine*.

Indeed, in accordance with the well known rules of French grammar, it is clear that this expression can only relate to the property and possessions most recently mentioned.

Now, what are the property and possessions of which the mention most closely precedes this expression?

They are "the property and possessions referred to in the preceding paragraph", which comprise the property and possessions set out in paragraph 2.

25. This very statement is again confirmed by the final phrase of paragraph 2, concerning the Wakfs (the pious foundations) created.

Indeed, there can be no doubt that the Wakfs must be respected by the successor States in respect of the property and possessions dealt with in paragraphs 1 and 2.

26. It is however necessary to answer the following question:

Since the whole of the property and possessions constitutes only one and the same category, why have certain of them been specially dealt with in paragraph 2?

The answer to this question is very simple, and it is supplied by the words placed at the commencement of paragraph 2: "It is understood that" . . . . .

These words prove beyond all doubt that, apart from the question of the Wakfs, the sole object of paragraph 2 is to fix the *complete* range of paragraph 1 and so to avoid any doubt whatever in regard to the fate of the property and possessions referred to in paragraph 2.

27. The argument, set forth in the case of the heirs, proceeds as though paragraph 2 had been worded in the following manner:

"So far as regards the property and possessions of which the Iradés . . . . have ordered the transfer from the Civil List to the State, ... the said States will be subrogated to the Ottoman Empire".

In this case, perhaps, it might have been necessary to consider whether the subrogation must produce its ordinary effects: whether, consequently, the successor States would have acquired the "Iradé properties" only in the case where, by the said transfer, the Ottoman State had become owner of the property; and whether this being the case, this acquisition could only have taken place subject to all the charges which, in any way, affected that property.

But there is a very great difference between this wording and that which was adopted in paragraph 2.

By the latter wording, combined with paragraph 1, *the signatories to the Treaty have been careful to define, in the most categorical terms, the exact effects of the subrogation as they conceived it.*

They have specified that, *by this subrogation*, the successor States *shall acquire* the property and possessions mentioned in paragraph 2, and that these States shall acquire them *without payment*, that is to say, without costing them anything at all—with the sole reservation of respect for the Wakfs.

It is not then possible to apply to the subrogation set up in paragraph 2 the general principles applicable in the matter of subrogation and *which only apply in so far as the effects and conditions of the subrogation are not defined in the formal act creating the subrogation.*

To apply these general principles in the case now under consideration would be to disregard the *certain* and *imperative* provisions of paragraph 2. That would be to distort the actual terms of the text.

Hence, on the simple statement that all the properties whatsoever, situate in the detached territories, formed part of the properties of which the Iradés of 1908 and 1909 had ordered the transfer from the Civil List to the State or of the properties which, on the 30th October, 1918, were administered by the Civil List for the benefit of a public service, the successor States have the right to own them *de plano*.

28. But, by numerous and long quotations, extracted from the minutes of the discussions which preceded the signature of the Treaty of Lausanne, the authors of the Opinions before referred to have undertaken to show that the intention which governed the drafting of paragraph 2 corresponds with the views expressed in those Opinions.

To this argument one could properly object that, when the terms of a document are sufficiently clear—as are the terms of paragraph 2—it is generally admitted that the document must be accepted such as it is, without there being room to interpret it by seeking the intention, which in this case must be found in the words of the document.

With this reserve, which is fundamental and a matter of law, the Undersigned is of opinion that the *common* intention of the parties, in paragraph 2, is undoubtedly in conformity with the statement which has been made of the wording of this paragraph.

29. This common intention of the parties must be found, not in the declarations, often confused and sometimes inexact, which were made on the subject of the property of the Civil List, but in the successive proposals and counter-proposals which " crystallized " from the discussions.

(*a*) On the 6th January, 1923, the Allied Delegations proposed the following clause:

" The States in favour of which a territory has been detached from Turkey will acquire without payment all the property and possessions situate in that territory and registered in the name of the Ottoman Empire *and of the Civil List* "*.

The Turkish delegation rejected the words " and of the Civil List " and asked that the property registered in the name of the Civil List should be excluded from the property to be acquired by the States in whose favour a territory was detached from Turkey.

(*b*) On the 8th March, 1923, the Turkish Delegation made the following counter proposal:

" The States in whose favour territory has been detached from Turkey, shall acquire without payment all the property and possessions situate in that territory and registered in the name of the Ottoman Empire.

" *The rights of the Civil List over the property and possessions situate in the said territories and inscribed in its name shall be preserved*† .

This counter-proposal was not accepted by the Allied Delegations.

(*c*) On the 12th June, 1923, the financial experts, to whom the question had been referred, submitted the following text:

" The States in whose favour, in Asia, a territory has been detached from the Ottoman Empire by the present Treaty, shall acquire without payment all the property and possessions of the Ottoman Empire situate in that territory.

" *It is understood that the property and possessions of which the Iradés of the 26th August, 1324, (8th September, 1908), and of 20th April, 1325, (2nd May, 1909), ordered the transfer from the Civil List to the State, are included among the property and possessions referred to in the preceding paragraph.*

" The property and possessions of the Civil List not referred to by the said Iradés will be considered as private property‡.

(*d*) On the 23rd June, 1923, in the course of a private meeting, the Turkish Delegation observed that there is need to *distinguish* three categories of property: first, property of the Ottoman Empire which the Successor States will acquire without payment; secondly, property of the Civil List, transferred to the State by the Iradés of 1908 and 1909, the detached territories are in so far as concerns these properties, subrogated to the rights of the Ottoman Empire; these properties continue, moreover, most frequently to be administered by the Civil List; thirdly, the personal property of the Khalif or of the members of his family, which are administered by the Civil List "§.

The question was referred to the experts.

(*e*) On the 29th June, 1923, the experts produced a new text as follows:

" The States in favour of which, in Asia, a territory is detached from the Ottoman Empire by the present Treaty will acquire without payment all the property and possessions of the Ottoman Empire situate in that territory ".

" *It is understood that the property and possessions of which the Iradés of 26th August 1324, (8th September 1908), of the 20th April 1325, (2nd May 1909), ordered the transfer from the Civil List to the State as well as those which, on the 30th October, 1918, were administered by the Civil List for the benefit of a public service, are included in the property and possessions referred to in the preceding paragraph, the said States being subrogated to the Ottoman Empire in so far as concerns these properties and possessions. The Wakfs created over these properties must be respected.*

" The provisions of the present article will not modify the juridical nature of the property and possessions inscribed in the name of the Civil List or administered by it and not referred to in the previous paragraph|| ".

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* Minutes of the Conference of Lausanne, First Series, Vol. III, page 47.
† Minutes of the Conference of Lausanne, First Series, Vol. IV, page 45.
‡ Minutes of the Conference of Lausanne, Vol. I, page 249.
§ Minutes of the Conference of Lausanne, Second Series, Vol. I, pages 397 and 398.
|| Minutes of the Conference of Lausanne, Second Series, Vol. I, page 257.

It is this text which, with certain modifications, notably concerning the property transferred from the Civil List to the State and situate in the territories of the old Ottoman Empire transferred to Greece, became Article 60 of the Treaty of Lausanne.

30. It is sufficient to compare the terms of the above quoted observations of the Turkish Delegation with the terms of the text expressing the *final agreement*, to establish that, especially in what concerns the properties dealt with by the Iradés, *it was not the Allied Delegations who adhered to the point of view of the Turkish Delegation, but it was the latter which accepted the point of view of the Allied Delegations.*

Indeed, if the point of view of the Turkish Delegation had prevailed, the final agreement would have preserved the distinction, *desired by the Turkish Delegation*, between property belonging to the Ottoman Empire and the property dealt with by the Iradés.

Now, quite on the contrary, both kinds of property have been mixed in one and the same mass, since the latter have been *included* in the former.

If the point of view of the Turkish Delegation had been adopted, the subrogation of the Successor States would have been expressed—*as the Turkish Delegation wished*—in general terms, which would have necessitated the consideration referred to in paragraph 27 above.

Now, on the contrary, the subrogation has been formulated, not in general terms, but by the *specification of the ways in which it would take effect.*

In accepting, *subject to this specification*, that the Successor States should be subrogated to the Ottoman Empire, the Allied Delegations have done nothing but maintain their point of view, and have accepted nothing other than what was implied in the case of the property referred to in the first paragraph, since equally the acquisition of this property by the Successor States necessarily involved their subrogation to the Ottoman Empire.

One is then justified in concluding that the common intention of the parties, in the second paragraph, has been to assure to the Successor States possession of the property included in the Iradés in exactly the same conditions as apply to the property dealt with in the first paragraph.

31. This conclusion seems the more logical and natural in that the Turkish Republic has never distinguished, in Turkish territory, between the property dealt with by the Iradés and the property of the State.

As has been stated above, paragraph 18, it has even, by a law prior to the ratification by it of the Treaty of Lausanne, proclaimed, with a particular and rare insistence, that all the property of the Civil List, whether belonging to Abdul-Hamid II or to any other Sovereign of the Ottoman Empire, situate in Turkish territory, is acquired by the Nation.

It is scarcely conceivable that the Turkish Republic, having acted in this way *municipally*—as was its right—should *really* have had the intention of contesting the right of the Succession States to act in the same manner as itself with regard to the property transferred by the Iradés.

32. The authors of the above mentioned Opinions further invoke, in support of the case of the heirs, certain clauses of the Treaties which at the end of the Balkan wars were made between the Ottoman Empire and the Balkan Powers, as well as certain clauses of the Treaties which put an end to the general war.

It is well, therefore, to examine the clauses which are invoked and to draw from this examination the appropriate conclusions.

(*a*) Treaty of Constantinople of the 16–29th September, 1913, between Turkey and Bulgaria, Article 13:

33. " The private property of His Imperial Majesty the Sultan, as well as that of the members of the Imperial Dynasty, will be upheld and respected. His Majesty and the members of the Imperial Dynasty shall be able to sell or let on lease this property by Power of Attorney ".

" The position shall be the same in regard to the property of the private estates which belonged to the State. . . . "

It is clear that by " Private property of the Sultan ", the authors of the Treaty intended only the property which effectively *belonged* to the Sultan, and not the property transferred from the Civil List to the State by the Iradés of 1908 and 1909.

Indeed, at the date of the Treaty, no one disputed, in Turkey or elsewhere, the existence and the validity of these Iradés.

(*b*) Treaty of Athens of the 1st–14th November, 1913, between Turkey and Greece, Article 7:

34. " The private property of His Imperial Majesty the Sultan, as well as that of the members of the Imperial Dynasty, shall be upheld and respected. His Imperial Majesty and the members of the Imperial Dynasty shall be able to sell or let on lease this property by Power of Attorney.

" Any difference or dispute which may arise in the interpretation or the application of the present article shall be decided by arbitration at the Hague, in virtue of a special submission to be made."

Special Protocol No. 2.

" The Imperial Ottoman Government maintaining that the property of the private estates of the State situated in the ceded territories should remain with it, and the Royal Hellenic Government not agreeing and maintaining that this property ought to belong to it, the two contracting parties have agreed to submit this question to an arbitral Tribunal at the Hague, in virtue of a special submission to be made.

" The number and the extent of the properties in question will be found in the list annexed to this Protocol ".

35. It is important to point out here that *this list* designates specially and principally the several properties, mining concessions and other undertakings " which have been transferred from the Civil List to the State " and that these properties* are *classed* amongst the " property of the Private Estates of the State ".

The interest which this Protocol offers—in connexion with Article 60, paragraph 3, of the Treaty of Lausanne—is manifest:

Firstly, the Protocol states that, in the territories ceded to Greece, there exist properties which have " been transferred from the Civil List to the State ";

Secondly, it states that the allocation of these properties is disputed between the Hellenic and Ottoman Governments. Each of these *Governments* claim to be entitled to them;

Thirdly, the very terms of the protocol show that the above-mentioned properties are not " the property of the Sultan and of the members of the Imperial Dynasty ";

Fourthly, Article 60, paragraph 3, of the Treaty of Lausanne relating to the same property, takes note of the litigation existing in regard thereto between the Hellenic Government and the Turkish *Government*.

Thus, the Turkish Government, in the terms of Article 60, paragraph 3, as formerly the Ottoman Government, in the terms of the above-mentioned protocol, claimed *for itself, that is to say, for the State that it represents,* the property in question.

Neither of them claimed the property for the Civil List.

Neither of them could do so.

Why?

For reasons which, though simple and evident, are still disputed, namely, that the said property *belonged* to the Ottoman State by virtue of the Iradés of 1908 and 1909 and that those Iradés had been acted upon.

This confirms, if there was any need of it, the considerations which have been set out above, paragraphs 23 to 31, and which will be set out in Part B of the present Opinion.

(*c*) Treaty of Istambul of the 1st–4th March, 1914, between Turkey and Serbia, Article 6:

36. " The private property of His Imperial Majesty the Sultan, as well as that of the members of the Imperial Dynasty, will be preserved and respected. His Imperial Majesty and the members of the Imperial Dynasty shall be able to sell or let on lease their property by Power of Attorney.

" Any dispute or difference which may arise in the interpretation or application of the preceding stipulations shall be settled by arbitration at the Hague by virtue of a submission to be entered into.

" As to the property of the private estates of the Ottoman State, situated in the ceded territories, ownership being claimed by the two Governments, the contracting parties have agreed to refer this question also to an arbitral tribunal at The Hague, by virtue of a submission to be made. The number and extent of the properties in question is set out in the list annexed to the present Treaty ".

* It is beyond doubt that these properties are included amongst the properties which were the subject of the Iradés in question.

37. Here again, this list includes the almost complete enumeration of the " property which passed from the Civil List to the State ", and this property is *included* among the " property of the Private Estates of the Ottoman State ".

The observations made above (*b*) in regard to the Treaty of Athens, being in greater part applicable to the Treaty of Istambul, the Undersigned contents himself with referring to them.

(*d*) The Treaties ending the general war.

38. The dispositions of these Treaties which have been invoked are conceived in practically similar terms.

Shortly and generally, they state that the Allied Powers shall enter into possession of the properties belonging to the Sovereigns and Sovereign families of the enemy States and situate in the territories detached from those States, and that the latter shall pay to the said Sovereigns and Sovereign families the value of the properties thus acquired by the Allied Powers.

It is sufficient to observe here that these dispositions relate to properties *belonging* to the Sovereigns and Sovereign families above designated.

Now, in the present discussion, we are concerned with the properties which, by virtue of the Iradés of 1908 and 1909, *had ceased to belong* to the Sovereign of Turkey.

To invoke, in support of the claim of the heirs, the above dispositions, is clearly to beg the question.

39. In the opinion of the Undersigned, the study, which has just been made in paragraphs 23 to 28 above, shows that the very basis of the claim of the heirs is without any substance.

It is then from a purely subsidiary point of view that the Undersigned will now proceed to examine the arguments put forward, in the claim of the heirs, concerning the validity of the Iradés of 1908 and 1909.

B.—The validity of the Iradés of 1908 and 1909.

40. On this question one must first make a double observation:

(*a*) The validity of the Iradés of 1908 and 1909 is consecrated by the Treaties exchanged between Turkey and the Balkan Powers in 1913 and 1914.

This consecration follows incontestably from the before-mentioned texts of those Treaties.

If then,—reserving the decree law of 8th January, 1920, which will be discussed later—*the Iradés were valid in the relations between the parties to those Treaties, why should they not be equally valid in the relations between the parties to the Treaty of Lausanne?*

It hardly seems that one can rightly maintain that, valid in 1913/1914, the Iradés were not valid in 1923.

(*b*) But, the Treaty of Lausanne also consecrated the validity of the Iradés.

It consecrated it by paragraph 3 of article 60, which refers to the Treaty of Athens and *which necessarily implies the recognition of the validity of the Iradés by the Turkish Delegation itself.*

It has consecrated it by paragraph 2 of that article.

That paragraph, so far as concerns the Iradés, would have no purpose if the validity of the Iradés could be called into question.

One cannot maintain that such a clause still in force in a Treaty constituting an international law can be treated as non-existent.

And it was in recognizing on good legal ground the validity of the Iradés that the Mixed Anglo-Turkish Arbitral Tribunal, in its judgment of the 16th December, 1930, emphasized the following reason:

> " Whereas . . . . . the said rights (the rights exercised by the British Government over the property in dispute)have their legal origin *in an act of conveyance made by the Turkish State in the fullness of its sovereignty and sanctioned by the provisions of article 60 of the Treaty of Lausanne,* thus clothing the legitimacy attaching to acts carried out in accordance with international law. . . "

41. But, independently of their consecration by the above mentioned Treaties, and in considering them from the point of view of Turkish law itself, *the Iradés were perfectly valid.*

That is what the Undersigned proposes to demonstrate in studying each of the arguments advanced to establish the alleged invalidity of the Iradés, and in setting out the position of the Iradés, their true position, individual or joint, in Turkish law.

42. Leaving on one side the circumlocutions formerly used in Turkey, especially in affairs between the Sovereign and the Ministers who were only his creatures, the Iradé of 1908 was *an act of reparation* made by Abdul-Hamid II to his people.

As has been said above, paragraph 14, the Sultans of Turkey regarded themselves as the absolute masters of the property of the Public Estates.

But, rare are the Sultans who have disposed of these goods for their own profit, to the extent to which Sultan Abdul-Hamid II so acted.

The monopolizing and usurpation, practised under the reign of this Sultan were of public notoriety, and it is evidenced in general terms in the Fetwa* (verdict) of the Sheik-ul-Islam dated 7th Rébi-ul-Akhir 1327, (14th April, 1325) (26th April, 1909), as the result of which the Sultan Abdul-Hamid II was deposed by the unanimous decision of the Ottoman National Assembly, composed of the members of the Senate and of the Chamber of Deputies.

Being an *act of reparation*, the Iradé of 1908 is therefore not to be construed by the provisions relative to transfers of property, but by those which govern the " Gassb ", that is to say, the usurpation of the property of another.

43. The transfer provided for in the Iradé of 1908 being only a *restitution*, could not be and was not subordinated to any condition whatsoever.

Particularly, *it was not subject to the condition* of the raising of a loan of £T.1,000,000 for the purpose of the payment of the debts of the Civil List.

To establish this, it is sufficient to read the " Mazbata "† (minutes) of the Council of Ministers of the 1st–13th September, 1908, taking note of the transfer ordered.

Indeed, it follows most clearly from this Mazbata that it is not the Sultan himself, but the Minister of the Civil List who, as a consequence of an Iradé *previously promulgated* and relative to this transfer, took the initiative of *requisitioning* the said loan, having estimated that the Civil List could not possibly pay its debts.

It follows equally from the said Mazbata that this *requisition* was approved by the Sultan as well as by the Council of Ministers, but it in no way follows that the one or the other had considered the loan as the counterpart, as the *condition* for the said transfer, or that the Council of Ministers had contracted an *obligation* in regard to this loan.

In fact, the debts of the Civil List were made the object of minute examination, carried out by the competent Services of the State, and, for the payment of their true amount, so determined, dispositions were taken in the Finance Law of the year 1325 (1909–1910) and in the Finance Laws of subsequent years.

44. In no respect was the Iradé of 1909 a measure of confiscation.

It was not such a measure, if one regards the property with which it deals as having been legitimately acquired.

It was not such a measure, if one regards that property as having been illegitimately acquired.

In the first case, the Sultan Mehmed Reshid V, the successor of Abdul-Hamid II had, for the reason indicated above, paragraph 16, the right to appropriate to himself the said property or to dispose of it in favour of the State.

In the second case, the Sultan Mehmed Reshid V had the duty to restore the property to the nation, thus completing the partial act of reparation which had been effected by his predecessor by the Iradé of 1908.

In both cases, it is the Sultan Abdul-Hamid II who had committed an act of confiscation in causing to be inscribed in his own name property which ought to have devolved upon his successor or to have been retained by the nation.

In both cases, the Iradé of 1909 was an act of " reversing confiscation ".

It was no more an act of confiscation than was the law of the Grand National Assembly of Turkey of the 3rd March, 1924, already mentioned above, paragraph 18.

45. The Iradé of 1909, notwithstanding the generality of its terms, applied to quite other property than that of which the transfer had been ordered by the Iradé of 1908.

The difference between the respective objects of these Iradés will be clear from the exposition which is made below, paragraph 47.

But, at the moment and whatever may have been said, the Undersigned believes himself able to affirm that this difference clearly appears from a reading of the lists which the Turkish Delegation officially communicated to the Conference of Lausanne and which indicate the properties transferred by virtue of each of these Iradés.

The general terms of the Iradé of 1909 cannot then be invoked in order to allege that the Iradé of 1908 had not and had not had a legal existence.

* *See* the New Dustour (Collection of the Laws and Decrees of the Ottoman Empire), Vol. I, page 166.
† *See* the New Dustour, Vol. I, pages 76 and 77.

46. Neither the Iradé of 1908 nor that of 1909 was submitted to the deliberations of the Chambers.

They were not so submitted, because the vote of the Chambers was not necessary in order that acts, such as these Iradés, should effect the surrender of property for the benefit of the State.

But, they formed none the less part of the Ottoman legislation.

They formed part of it just the same as did many other texts, earlier or later than the year 1908, which were not submitted to the deliberations of the Chambers.

They formed part of it by virtue of the Financial Law, which each year, had annexed a Table C, in which were designated the texts having force of law in regard to the collection of the receipts of the State.

In this Table C, which was referred to in and formed part of the Financial Law, figured each year *the documents based on the Iradés and setting out respectively the whole of the transfers ordered by the Iradés.*

The entries thus made in the Table C constituted *acts of the public power*, effected by the legislative power, against which *there existed no way of appeal before any jurisdiction whatsoever.*

Appeal against these entries was as impossible as it is against the before-mentioned law of the 3rd March, 1924.

47. The Iradés of 1908 and 1909 have had full effect as from their promulgation. Abundant proofs exist of this effective execution of the terms of the Iradés. Here are a few of them:

(*a*) Shortly after the opening of the first Session of the Ottoman Parliament in December, 1908, the Government then in power submitted to it a draft budget in which was contained, in a special chapter of the Part relating to Receipts, £T.404,347 representing, for the current year, the revenue of the property of which the transfer had been ordered by the Iradé of 1908*.

This draft having been submitted to the Financial Commission of the Chamber of Deputies, that Commission added to the chapter in question *a second chapter* containing amongst the receipts *£T.215,886 representing, equally for the current year, the revenue of the property of which the transfer had been ordered by the Iradé of 1909**.

(*b*) The Budget of the Ministry of Finance, relating to the year 1325 (1909–1910), provided, in chapter 20, for the purpose of the salaries and expenses of the officials charged with the administration of the greater part of the properties transferred from the Civil List, and other salaries and expenses, a credit of £T.145,438 and 81 piastres.

(*c*) The Budget of the same year of the Ministry of Forests and Mines included, in its chapter 8, article 6, a credit of £T.3,994 and 44 piastres for the allowances of the officials who were employed in the forests transferred from the Civil List.

(*d*) In the estimates of the receipts for the said year, there were entered as receipts, in distinct chapters, the amounts above specified (*a*).

(*e*) Article 26 of the Finance Law of the year 1326 (1910–1911) provided in particular that the Government was authorized to establish immigrants and nomad tribes on the farms transferred from the ex-Sultan or to grant these farms to the cultivators, or to lease them to Ottoman Companies with a view to their development and ultimate sale, in lots, to Ottoman subjects.

(*f*) The Budget of the Ministry of Finance for the year 1326 contained, in chapter 8, article 17, a credit of £T.20,799 and 60 piastres for the works in connexion with the quays of Kadi-Keuy which, before the Iradé of 1909, formed part of the Imperial Estates.

(*g*) The same Budget contained, in chapter 12, article 16, a credit of £T.20,000 to provide for the distribution of seeds to the cultivators residing on the properties transferred from the Civil List.

(*h*) The estimate of receipts for the said year contained, in chapter 4 of section 5, an item of receipts amounting to £T.62,513, the produce of the boats navigating on the Euphrates and the Tigris, which boats had been transferred from the Civil List to the State.

* *See* the General Report of the Financial Commission of the Chamber of Deputies, Part relating to Receipts, Session 1324/1325 (1908/1909), page 102.

(*i*) Article 21 of the Financial Law of the year 1327 (1911-1912), modifying the terms of the above quoted article 26 of the Financial Law for the year 1326, stipulated particularly that, until the full payment of the sums due from the cultivators, to whom had been granted land transferred from the Civil List, the balances due should be governed by the laws relative to mortgages and to sales with power of redemption*.

(*j*) The decree-law of the 8th January, 1920, itself,—its authority however is nil, as will be established later,—confirmed by its first article the juridical existence of the Iradés. It confirmed, moreover, in the same article and in articles 2 and 3, the full execution of the dispositions of the Iradés.

In this way it is clearly established that the Ottoman State has effectively *acted as owner* of the property which had been transferred to it by the Irades of 1908 and 1909.

48. Ottoman law itself, ordering or implying by its multiple and reiterated dispositions, the appropriation by the State of property so transferred, cannot be suspended in its operation by the fact that the requisite rectifications have not always been made in the cadastral registers.

Such being the law, these rectifications could and *can* be made at any time.

And clearly, simple delay in their execution cannot be invoked as an argument that the law is inoperative.

Article 1737 of the Médjellé (Ottoman Civil Code in force up to 1926) and the dispositions of the land laws, cited in the claim of the heirs, are completely foreign to the case at present under consideration, where the question is one of the *automatic application of the will of the law*, as in the cases of succession on failure of heirs, of the eviction of the occupiers of public lands who have not complied with the obligations contained in the Land Code, or of the cancellation of mining or other concessions.

49. The decree-law of the 8th January, 1920, promulgated by the Sultan Mehmed Vahd-ed-Dine VI, was of no legal validity, and this notably for the following reasons:

(*a*) The decree-law was contrary to the Ottoman Constitution.

In fact, article 36 of that Constitution, on which the Sultan relied in promulgating his decree-law, is conceived in the following terms:

" If, at a time when the General Assembly (Senate and Chamber of Deputies) is not in session, there should arise a pressing necessity to guard the State from danger or to preserve the public security, and if there should not be time to convoke and bring together the Assembly to deliberate on the legislation necessary for this purpose, the decisions which, not being contrary to the Constitution, shall be taken by the Council of Ministers, shall have by Imperial Iradé the force of law provisionally until the decision which may be taken in the matter at the meeting of the Chamber of Deputies.

" The said decisions shall be communicated to the Chamber of Deputies at its first meeting "†.

Thus, the provisional laws (decree-laws) could be promulgated only if there should " arise a pressing necessity to guard the State from danger or to preserve the public security ".

This was the *first* and fundamental condition for the validity of decree-laws.

Decree-laws promulgated without there having been " a pressing necessity to guard the State from danger or to preserve the public security " were thus unconstitutional.

Now, it would not appear to anyone that the decree-law of 8th January, 1920, ordering the return to the Civil List of the property and possessions which had been transferred and surrendered to the State by the Iradés of 1908 and 1909, satisfied the imperative condition required by the above-mentioned article 36.

It is true that certain other decree-laws equally did not comply with this condition.

But, as is in substance stated in article 15 of the Médjellé, " What is contrary to law cannot serve as a precedent ".

It is open to any interested party to plead by way of exception the evident unconstitutionality of the decree-law of the 8th January, 1920, and its purely arbitrary character.

(*b*) The decree-law was not published either in the territory under the jurisdiction of the Government of the Grand National Assembly of Turkey, or in the territories occupied by the Allied Powers.

* *See* the New Dustour, Vols. 1, 2 and 3, passim.
† The above text is practically the literal translation of the Turkish text.

The publication of laws in different parts of the Ottoman Empire was imperatively required by the law of the 18th May, 1327, (1911)*, Article 3.

And the decree-law itself provides, in article 5, that it shall come into force *as from the date of its publication*.

(*c*) The Government of the Grand National Assembly of Turkey has at no time considered valid the decree-law of the 8th January, 1920.

It has even radically set it aside by the Law of the 3rd March, 1924.

(*d*) the High Commissioners for Great Britain, France and Italy, under whose protection the Sultan Mehmed Vahd-ed-Dine VI exercised a nominal sovereignty, almost confined to the limits of his palace, formally protested against the decree-law.

(*e*) Quite apart from these considerations, the decree-law of the 8th January, 1920, could have no effect in the territories occupied by the allied armies.

For it is quite beyond argument that, in occupied territory, the sovereignty of the State over that territory is *suspended*, and that its sovereignty having become theoretical, it is replaced by *the sovereignty in fact* of the occupying State.

By reason of this sovereignty in fact, the application in the occupied territory of any new legislation by the sovereign State in law is subject to the express consent of the occupying State, which may even modify, according to its requirements, the legislation already in force at the moment of occupation.

To these principles, which are those of recognized international law, article 9 of Protocol XII of the Treaty of Lausanne, relied on in the case of the heirs, can constitute no limitation—indeed it constitutes in a specified case, the application of these very principles.

CONCLUSION.

For the reasons developed in this Opinion, the Undersigned is of the view that the claims formulated by the heirs of the Sultan Abdul-Hamid II to the property and possessions referred to in article 60, paragraph 2, of the Treaty of Lausanne, are not well founded in law.

(Signed): B. HALADJIAN.
Doctor of Law of the Faculty of Paris.
Formerly: Advocate at Constantinople.
Advocate and legal adviser to the International Council for the Ottoman Public Debt.
Deputy for Constantinople.
Member and President of the Financial Commission of the Chamber of Deputies.
Ottoman Minister of Trade and of Public Works.
Ottoman Delegate to the Commission for the Financial Affairs of the Balkans.
Member of the Permanent Court of Arbitration at the Hague.

ANNEXE I.

(Translation.)

Minutes† of the Council of Ministers held on the 1st September, 1324 (13th September, 1908).

With a view to assisting the balancing of the receipts and expenses of the State and to facilitating the conclusion of the projected loan, an Imperial Iradé *having been* issued providing for the transfer and surrender to the Ministry of Finance of the Imperial lands and estates,—of which a list is attached,—administered by the Ministry of the Civil List and producing an annual revenue of more than £T.400,000, and, this Imperial Iradé *having been* transmitted to the Ministry of the Civil List, the latter, in its report to His Imperial Majesty, has made the following observations:

A part of the Imperial estates are estates *ab antiquo:*

A large part of the Imperial estates have been registered in the name of His Imperial Majesty, in return for the payment of their value to the Ministry of Finance or to their owners, solely for the noble purpose of preventing their appropriation by foreigners and of securing the prosperity of the country:

* *See* the New Dustour, Vol. 3, pages 417 and 418.
† *See* the New Dustour, Vol. 1, pages 76 and 77.

For the development of these properties, sums in excess of the purchase price have been expended, and charitable institutions and schools have been created thereon;

On account of the emoluments and other matters, relating to the Civil List and to the Imperial estates, the Civil List has incurred debts amounting to £T.1,150,000;

Even if these debts were compromised and in part postponed, their payment would require at least £T.850,000;

It is impossible for the Civil List directly to secure this sum;

The properties and lands surrendered and handed over to the Ministry of Finance bring in an annual revenue of more than £T.400,000;

Moreover, in respect of the tithes on these lands, the Civil List levies only one in ten, whilst, in consequence of their surrender to the Ministry of Finance, this tax will be levied on the basis of one in eight; under this head, the Ministry of Finance will have a supplementary profit of £T.40,000 to £T.50,000;

In consequence, the Ministry of the Civil List *has begged* His Imperial Majesty to increase by £T.1,000,000 the amount of the proposed loan by the State, and to cause this sum (of £T.1,000,000) to be transferred to the Civil List, it being for the Sublime Porte to determine the necessary measures to be taken in regard to payment of interest and redemption.

This *request* having been approved by His Imperial Majesty, we have taken cognisance of the Tezkéré-i-Houssousié (letter from the Sultan's Secretariat) dated 13th Châban, 1326 (25th August, 1324) (6th September, 1908), making known the Imperial Iradé relative to its execution.

The surrender to the Ministry of Finance of the above-mentioned Imperial estates, administered by the Civil List and bringing in an annual revenue exceeding £T.400,000, constitutes still another benefaction to be added to all those which His Imperial Majesty has already made for the improvement of the Finances of the State.

For this surrender, His Imperial Majesty has received the immense and infinite gratitude of his people.

We repeat on this occasion our prayers for His Imperial Majesty and we beg him to recognize our devotion and profound respect.

So far as concerns the sum of £T.1,000,000, required by the Civil List to meet its debts—regard being had to the fact that the annual revenue of the said properties exceeds £T.400,000,—*it will be possible* to conclude a loan of £T.1,000,000 in imposing as a first charge on this sum (of £T.400,000) an amount of £T.50,000 to meet the interest and amortization charges on the loan.

It has been decided to charge the Minister of Finance to *open* up negotiations with the Ottoman Bank for the loan of £T.1,000,000*.

* This minute was approved by Iradé of the same date.

ANNEXE II.

(Translation.)

Fetwa of the Sheik-ul-Islam dated 14th April, 1325 (26th April, 1909).*

Question.

If Zeïd†, Imam (Commander) of the Mahommedans has suppressed in the books of the Chéri (Mahommedan law) various important provisions;

If he has prohibited and burned these books;

If he has wasted the Beït-ul-Mal (Public estate) and has taken possession of it contrary to the Chéri;

If he has killed, imprisoned and exiled his subjects without legal cause;

If he has been customarily guilty of other exactions;

If, after having sworn to return to a just conduct, he has perjured himself and continues to be the cause of great troubles of a nature seriously to prejudice the property of the Mahommedans and the interests of Islam; if he provokes assassinations;

If the Mahommedan population, triumphing over the infamous influence of Zeïd, have caused to be forwarded from the different parts of the State messages indicating that they consider him to have forfeited his office;

If the maintenance of Zeïd is a certain cause of evil and if his fall might be a cause of good;

The decision by which the " Erbab-i-hall-ou-Akd " and the " Evlia-i-Oumour " (the persons having jurisdiction) will have preferred one or other of the following solutions: to propose to Zeïd to renounce his position of Imam and of Sultan or to depose him, is the execution of such decision obligatory?

* *See* New Dustour, Vol. I, page 166.

† Zeïd means " First " and designates the Sultan Abdul-Hamid II.

Answer.

It is so*.

Given by the humble Es-Seïd Mehmed Zia-ed-Dine, on whom may God have pity.

* The deposition of a Sultan was in Turkey generally preceded by a Fetwa of the Sheik-ul-Islam.

ANNEXE III.

(Translation.)

Kararnamé (decision) of the National General Assembly dated 14th April, 1325 (26th April, 1909).*

On Tuesday, the 7th Rébi-ul-Akhir of the year 1327–14th April, 1325 (26th April, 1909), at half-past-six (Turkish time), the Fetwa signed by the Sheik-ul-Islam Mehmed Zia-ed-Dine Effendi having been read before the Senate and the Chamber of Deputies, united in the National General Assembly, and, of the two alternatives contemplated in this Fetwa, the deposition having been chosen by a reasoned and unanimous decision, the Sultan Abdul-Hamid II has been deposed from the Khalifat of Islam and from the Ottoman Sultanate, and the lawful heir, His Imperial Highness Mehmed Reshid Effendi, has been raised to the dignity of Khalif and of Sultan, under the name of His Imperial Majesty the Sultan Mehmed V.

* *See* New Dustour, Vol. I, page 167.

ANNEXE IV.

(Translation.)

General Report of the Financial Commission of the Chamber of Deputies, Session 1324/1325 (December, 1908–August, 1909).

Statement of Receipts.

Page 102.

Valuation by the Commission.	*Valuation by the Government.*	*Nature of Receipts.*	*Art.*	*Chap.*	*Sect.*
£T. 404,347	£T. 404,347	Produce of the Public estates previously transferred from the Civil List.	1	10	1
215,886	—	Produce of the Public estates subsequently transferred from the Civil List.	2	11	1

ANNEXE V.

(Translation.)

Provisional Law (decree-law) of the 8th January, 1336 (1920).

Article 1.—The possessions, lands, farms, establishments and concessions, the transfer of which has been registered from the Civil List of the Ministry of Finance *in virtue* of the Imperial Iradés dated 1st September, 1324 (1908), and 21st April, 1325 (1909), have been transferred and restored to the Civil List with the exception of those which have been *sold, transferred* and *distributed* to immigrants by the Ministry of Finance. The right of appeal to the Courts of those who claim rights thereover is reserved.

Article 2.—The income of the possessions, lands, establishments and other properties mentioned above, received up to now by the Ministry of Finance *will not be restored*. Also, the revenues and expenses, as adjusted up to the end of the financial year 1335 (1st March, 1920), *will belong to* (and be a charge upon) the Ministry of Finance.

Article 3.—The provisions of the Agreements made by the Ministry of Finance concerning the possessions, lands, farms and other properties, *will remain in force* and *valid* until the expiration of the period for which they were made. However, after the expiration of the current financial year, the revenues and expenses arising from the application of these Agreements will belong to (and be a charge upon) the Civil List.

Article 4.—The Ministry of Finance is charged with the application of the present Kararnamé (decree-law).

Article 5.—The provisions of the present Kararnamé will be in force as from the date of its *publication*.

(C 23727) 50 12/36

No. 47.

Paris, 7th April, 1939.
26 Rue Nungesser et Coli.

ABDUL HAMID.

SUPPLEMENTAL MEMORANDUM TO THE OPINION OF THE 12TH SEPTEMBER, 1936.

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1. In an opinion dated the 12th September, 1936,—relating to the claims of the heirs of Sultan Abdul Hamid II of Turkey as to the property and possessions referred to in Article 60, Section 2 of the Treaty of Lausanne dated the 24th July, 1923—the undersigned set out the reasons why these claims must be considered as being devoid of any legal foundation.

2. Since the delivery of his opinion,—the findings of which agree with those set out in the declaration of Sir Adam Block dated the 29th March, 1938, in the declaration of Sir Alexander Waugh dated the 3rd May, 1938, and in the declaration of Mr. Henry Pears dated the 14th June, 1938—the undersigned has had the opportunity of examining a large number of official documents and works relating to the said claims.

3. The documents examined are the following:—copies, certified by the competent Turkish Authority as true copies, of the Iradés (decrees) set out in the above-mentioned article of the Treaty of Lausanne; copies similarly certified of the schedules of properties annexed to these Iradés; volumes of the Dustour (official digest of the laws and regulations of Turkey) of a later date than the volumes referred to in the Opinion; the files of the Ottoman Official Journal for the period 1st March, 1325, to 3rd April, 1332, (1909–1916), and comprising the discussions of the Chamber of Deputies and of the Senate; the Revised Edition of the Laws of Palestine; documents relating to the Court proceedings instituted by certain heirs of Abdul Hamid for the recovery of the land of Mouharraka situated in Palestine; the Memorandum dated the 10th February, 1925, submitted by the Government of the Republic of Turkey in the arbitration proceedings referred to in Article 47 of the Treaty of Lausanne dealing with the apportionment of the Ottoman public debt; the Arbitrator's Award dated the 18th April, 1925, concerning this apportionment.

A certain number of these documents have formed the subject matter of notes or letters exchanged between the Honourable Treasury Solicitor and the undersigned.

4. Among the works which were examined attention must be drawn to the following:—

" Life of Abdul Hamid " by Sir Edwin Pears,
" La Politique du Sultan " by Victor Berard,
" Abdul Hamid intime " by G. Dorys,
" Les Turcs. Ce que fut leur Empire . . . ." by B. Bareilles,
" Abdul Hamid " by G. Rizas.

5. Although it may be felt that further investigations are desirable, the undersigned —and also the Treasury Solicitor—feels that it is convenient to assemble in one memorandum, additional to the before mentioned Opinion, the more important findings which resulted from the examination of the said documents and works and which on several points corroborate or complete the arguments set out in that Opinion.

6. These points are as follows:—

A. The manner of devolution of estates which belonged to deceased or deposed Sultans.

B. The usurpations committed by Sultan Abdul Hamid II.

C. The Iradés of 1908 and 1909 and their nature.

D. The actual appropriation by the Ottoman State of the estates mentioned in the Iradés of 1908 and 1909.

E. The decree law of the 8th January, 1920.

A. *The manner of devolution of estates which belonged to deceased or deposed Sultans* (Paras. 15, 16, 17 and 18 of the Opinion).

7. In paragraph 16 of his Opinion the undersigned set out the traditional rules which, in Turkey, regulated the devolution of estates of deceased or deposed Sultans and in accordance with which the succeeding Sultan took possession of these estates indiscriminately.

As a proof of these rules the undersigned, in paragraph 18 of the Opinion, made particular mention of the decree law of the 8th January, 1920, promulgated by Sultan Mehmed Vahd-ed-Dine VI, under the terms of which this Sultan had claimed the " Iradé-properties " (properties referred to in the Iradés of 1908 and 1909) not for the children of Abdul Hamid, who had died in 1918, but for himself in his capacity of Sultan and head of the Imperial family as alone possessing the right of enjoying, administering and disposing of these estates.

In this connection the undersigned considered it useful to mention in a note to the above-mentioned paragraph 18, several paragraphs of the Opinion dated the 10th August, 1925, which Messrs. Roguin and Pellis had delivered to the said Sultan in support of a subsequent claim of his which was submitted to His Britannic Majesty.

In that paragraph 18, the undersigned even used many of the terms which Messrs. Roguin and Pellis had used in order to determine the legal position of the said Sultan.

8. Here is further evidence showing the existence and application of the said rules at all times, both before as well as after the restoration in July, 1908, of the constitutional regime in the Ottoman Empire:—

(*a*) Deputy Ebouzia Tewfik Bey, a well-known journalist and eminent writer, stated to the Chamber:—

" . . . . . by virtue of a rule which has at all times existed there is, in cases " where a Sultan is deposed, *always* a transfer to the occupant of the throne. The " inheritance of the preceding Sultan belongs *in its entirety* to the Sultan who has " mounted the throne . . . . *This is our historic rule* . . . ." (Official Journal of the 25th April, 1325/1909, Page 2).

(*b*) In the Senate, following the remark of a Greek Senator, who insinuated that the seizing by the State of the jewels which had belonged to Abdul Hamid might be in the nature of a confiscation, the former Grand Vizier Hussein Hilmi Pasha, president of the Senatorial Finance Committee, made the following statement:—

" There is no confiscation in this case. After the ex-Sultan (Abdul Hamid) was " deposed the chattels and jewels belonging to him personally *became the property* " *of H.I.M. the Sultan. These jewels have been abandoned by H.I.M. the Sultan* " *in the same way as other estates and lands which have been abandond to the* " *Ministry of Finance.* One can not talk of confiscation. Do withdraw this word. " *There is no usurper in the Government.*"

Following this statement, another Senator, Rechid Akif Pasha, remarked that the question did not even require discussion.

(Report of the session of the Senate of the 14th March, 1327/1911, Pages 625 and 626.)

(*c*) In the Senate, Senator Ahmed Riza Bey, former President of the Chamber, declared:—

" . . . . As you know, in this country on the death of a Sultan *his estates and* " *properties do not pass to his children* as they do in certain other States . . . . "

(Report of the session of the Senate of 28th December, 1331/1915, Page 204.)

9. It is desirable to join to this evidence the evidence given in the declaration of Sir Adam Block, (paragraph 4), in the declaration of Sir Alexander Waugh (paragraph 13), and in the declaration of Mr. Henry Pears (paragraph 7).

B. *The usurpations committed by the Sultan Abdul Hamid* (Paragraph 42 of Opinion.)

10. In several sittings of the Chamber the usurpations of Abdul Hamid have been made evident. Innumerable publicists of different nationalities have borne witness to these usurpations even while Abdul Hamid was reigning over the Ottoman Empire.

11. (*a*) Deputy Mustapha Assim Effendi, Vice-President of the Chamber, declared:—

" . . . . The farms inscribed in the name of Abdul Hamid were usurped properties . . . . "

(Official Journal of 14th May, 1325/1909, Page 8.)

(*b*) In extremely precise and striking terms Deputy Emroullah Effendi, Rapporteur (Reporter) of the Finance Committee, pointed out the enormous usurpations committed by Abdul Hamid.

He specified that the greater part of Abdul Hamid's properties, which were later abandoned to the State, were State property, and that these properties had been acquired by the Civil List " on account of the sums which should return to it in the future "; that these acquisitions carried out in this way had been made at prices well below the

true value of the said properties; that, for example, a farm (belonging to the State) in the province of Janina bringing in 40,000 Turkish Pounds *per annum*, had been bought for the sum of 20,000 Turkish Pounds.

He showed that out of 400,000 Turkish Pounds produced annually by the properties which were transferred to the State by virtue of the Iradé of 1908, 360,000 Turkish Pounds consisted of State revenues*.

He declared that on the farms of Abdul Hamid the aghnam (tax on sheep), the real property tax and tithes (due by tenant farmers to the State) had been collected entirely by the Civil List*.

He added that even sums taken directly from the Treasury by Abdul Hamid exceeded by a considerable amount the total of the Imperial allowance; that each time that salaries of officials were paid or that a loan was made, the Civil List took money (over and above the Imperial allowance); and that it was not possible to deny the demands of this Department which, to quote the terms used by Emroullah Effendi, " was created in order to destroy the nation ".

He estimated the amount of Abdul Hamid's debt to the nation at 30,000,000 Turkish Pounds.

(Official Journal of the 17th July, 1325/1909, Pages 4 and 5.)

12. However, Abdul Hamid did not restrict himself to grasping the estates and resources of the State itself. His grasping extended further, even to the resources of the Prefecture of the town of Constantinople. Following a question raised by Deputy Ilhamy Bey, the Prefect of Constantinople, Hazim Bey, produced to the Chamber a list setting out the expenses which the Prefecture had had to meet for the benefit of Abdul Hamid out of its own meagre budget. The total amount of these expenses exceeded 334,000 Turkish Pounds.

This list is particularly edifying. For example, it appears from it that Abdul Hamid made the Prefecture pay the purchase price of lands which had been expropriated and added to the Imperial gardens, as well as the transfer duties relating thereto; that he made the Prefecture meet the cost of building a chalet in these gardens, the price of a farm bought in the name of the Civil List (also the transfer duty on the same farm), the expenses relating to the building of a konak (mansion) for Fehim Pasha, a celebrated spy and assassin employed by Abdul Hamid, and even the cost of water used in the Palace of Yildiz (the normal residence of Abdul Hamid) and the cost of the gas for lighting the Imperial Palaces. (Official Journal of 1st June, 1325/1909, Pages 12 and 13.)

13. In the work entitled " Life of Abdul Hamid " by the late Sir Edwin Pears, who lived in Constantinople in Abdul Hamid's time, and who was a very well-known lawyer of high standing, the exactions and usurpations of Abdul Hamid are particularly clearly brought forward.

Here are a few extracts from this remarkable work:—

" It (the Department of the Civil List) at least caused to be known when great sums " which ought to have been employed for the public service of the State were abstracted for " the private use of the Palace. In one respect, indeed, the Civil List Department, which was " under the direct supervision of the Sultan, worked against the general public interest . . . . " (p. 25).

" He (Abdul Hamid) ruthlessly appropriated houses and grounds belonging to his " subjects, including two Christian cemeteries (for the gardens of the Palace of Yildiz)" (p. 117).

" Abdul Hamid came into conflict with the British and other ambassadors through his " efforts at land-grabbing.

" During the years 1882–1890 the Civil List, acting under the orders of Abdul Hamid, " dispossessed hundreds of peasants, occupants of lands throughout the country, in order to " add such lands to the private domain of the Sultan. It was remarked that these attempts " were first made in places where there were no foreign consuls, and upon Ottoman subjects " only. The intention was to prevent publicity to what in many cases was nothing short of " robbery . . . .

" After a while the creatures of Yildiz became bold enough to seize land belonging to " foreign subjects, and by 1890 there was probably no embassy that was not troubled with " complaints from its own subjects of attempts to steal their land with the building upon " it . . . . . " (p. 121).

" Abdul Hamid always loved money, and his private income had become enormously " increased by his employment of those who were ready to augment it at the cost of the " public treasury . . . . " (p. 122).

* These statements are distinctly and partially confirmed even by paragraphs of the Iradé of 1908 and of the schedule annexed to this Iradé.

14. Here is the evidence of M. Victor Berard, member of the Institut de France, in his work entitled " La Politique du Sultan ":—

". . . . . The administration is nothing but a pump for duties or ransoms. A minute " part of this money is spent upon local needs, the remainder finds its way to the capital or, " more correctly, to the Palace . . . .

" More than 200,000 men live on the strength of fear of the Master and receive for " their devotion, or merely for their indifference, a regular salary . . . .

" Every day the Prefectures received fresh demands for money from the Palace . . . ." (p. 41).

" Taking one year with another the Palace swallowed more than 150,000,000; the " Civil List would not be able to meet half these expenses.

" The Sultan first of all attempted to increase his personal income by increasing his " privately owned properties. He added to his private domain land belonging to the Crown, " to the State, to the mosques, to tekkés (convents), to pious foundations (throwing the " expenses of these foundations on to the State) and the estates of persons condemned to " death, of exiles and of suspects. He thus became the proprietor of at least one-sixth of " his Empire.

" The most fertile fields of the great Asiatic and European plains around Brousa, Aidin, " Serres and Avlona belong to him to-day. He is the owner of almost the whole of " Mesopotamia he has usurped half the vilayet of Baghdad, that is to say, the two empires " of Nineveh and Babylon . . . .

" Then he began to seek profits . . . . in a series of loans or of concessions to financial " syndicates, tobacco administration, quays, railways, monopolies. Each transaction of this " nature brought him in a fairly large sum, always at the expense of the State, either by " increasing the charges upon it or diminishing its revenues.

" Then, towards 1887, the Minister of the Civil List, Agop Pasha, invented quite an " ingenious scheme . . . . thanks to him the Sultan levies on the mercenaries of the State " a tithe which may amount to as much as 30 per cent and which he alters to his liking " according to the needs of the moment. He is the master of the rate since, by with-holding " or accelerating the payment of the drafts, he is able to raise or lower the rate of discount." (pp. 100–102).

" As the needs of the Palace continued to increase he sought after certain public " revenues . . . ." (p. 103).

15. Similar statements are found in the work of G. Dorys, entitled " Abdul Hamid intime ":—

". . . . He (Abdul Hamid) enlarged the park (of the Palace of Yildiz) and extended it " from Bechiktache Hill to Ortakeuy Hill buying, but mainly grasping, many lands both " public and private and proving by these actions the truth of the Arab proverb which " states: It is better to be a neigbour of fire than of the Sultan ". . . ." (p. 88).

" In the same way as at the time of the decline of Rome one saw the provinces labouring " solely to nourish their emperors, to-day all the efforts of the Ottoman empire and its " capital are absorbed by the Yildiz of Abdul Hamid . . . ." (pp. 114 and 115).

16. In his work entitled " Les Turcs—Ce que fut leur empire . . . .", M. Bertrand Bareilles supplied certain details of the methods used by the Minister of the Civil List to increase the funds of his master Abdul Hamid:—

" He (the Minister) first of all increased the income of the Civil List by some 15,000,000 " by using a very simple method. Withdrawing from the Treasury the best lands of the " Empire he paid the taxes thereon into the private coffers of his master. The confiscation of " the best farms which he paid for by decorations and pensions charged on the State funds " also increased its income. As occasion demanded, and in order to meet urgent needs, he " would dip his hand into the pensions and public education funds. On all loans he kept " back a proportion for himself, of which he would generously distribute a small part to " his entourage . . . ." (p. 197).

17. Similar statements are made in M. G. Riza's " Abdul Hamid " (p. 30).

18. These statements, which are fully confirmed by the before-mentioned declarations of Sir Adam Block, Sir Alexander Waugh and Mr. Henry Pears and similar statements, of which an enormous number could be produced, show in the same way as the many declarations made in the Ottoman Parliament, the purely grasping character of Abdul Hamid's acquisitions.

19. To these statements and declarations one must add the proof which is given by the very wording of the deed used in the Court proceedings by the heirs of Abdul Hamid claiming possession of the Miri land (land of the Public Domain) of Mouharraka.

Indeed, as reported in the judgment of Mr. Justice Cressall of the 30th July, 1937 (p. 2) this deed bears under the heading, " Nature of transaction " the following clause:—

" By fresh grant, by virtue of written authority emanating from the Nazareti Defter " Khahany (supreme authority for the registration of lands) dated the 15th December, " 1302, No. 61."

This clause shows clearly that the delivery of the said deed to Abdul Hamid took place in contravention of Article 3 of the Land Code which prescribes the payment of a " mouaddjélé " (cash payment) in cases of concession of Miri land, and in contravention of Article 8 of the same Code which prescribes that Miri land must be allotted to the local inhabitants in the manner therein laid down.

The acquisition of this land by Abdul Hamid thus gives a striking illustration of the grasping acts which he committed without any regard to the legislation then in force and to the detriment of the Treasury and of his subjects.

It seems impossible that principles which are set up in civilized countries for the protection of legally acquired property can thus be invoked and applied in order to give their legal blessing to such graspings.

In particular, it seems impossible that in these proceedings one should be able to take advantage of Article 66 of the land (Settlement of Title) Ordinance of the 30th of May, 1928, whose object was to ensure the restoration of a *right* and most certainly not in order to permit the heirs of a usurper to re-acquire a property first acquired in violation of law.

C. *The Iradés of 1908 and 1909 and their nature* (Paras. 4, 5, 42, 43, 44, 46 and 47 of the Opinion).

20. In his Opinion the undersigned set out the substance of the Iradés of 1908 and 1909 and by way of schedule supplied the French translation of the last of the texts, the object of which was the transfer of Imperial property carried out in 1908.

21. In the course of the proceedings instituted before the Land Court of Jaffa, the representatives of the Government of Palestine had in May, 1937, produced copies certified by the Registry of the Foreign Office, of the French and English translations of the two Iradés and of the schedules accompanying them—Iradés and schedules, the Turkish texts of which had been communicated to the Lausanne Conference by the Turkish Delegation and which had been returned to that Delegation.

22. During the same year (1937) investigations carried out at the French Ministry for Foreign Affairs brought to light copies in Turkish of these Iradés and schedules which had been obtained by the French Ambassador at Ankara and which were annexed to the letter from him to his Minister dated the 8th of March, 1930.

These copies are certified true copies of the originals by the Records Department of the Office of the President of the Council of the Turkish Republic. The Palestine Government has photos of these copies, which photos are certified by the French Minister for Foreign affairs and accompanied by authenticated English translations. By reason of the attestations they bear, these photos are not " copies of copies " but official reproductions of the originals themselves. Consequently they have exactly the same legal value as the originals themselves and determine, authoritatively, the whole extent of the transfers carried out in 1908–1909.

23. As the land of Mouharraka, which is the subject matter of this present action, is included among the estates and properties transferred to the State by virtue of the Iradé of 1909, only this Iradé and the Schedule annexed thereto need to be produced in the proceedings relating to this action.

24. It has been shown in the Opinion (paras. 42–44) that the Iradés of 1908 and 1909 were acts of atonement or restitution.

This nature of the Iradés is brought out with particular precision by Deputy Emroullah Effendi who declared:—

" The transfer to the Ministry of Finance of properties, lands, and mineral and other " concessions with which the deposed Sultan had dealt in his own name since 1293/1876 is a " transaction of *restitution of rights*, a reversion of rights to their owner, to the person who " was the original proprietor ". (Official Journal of the 17th July, 1325/1909, Page 9.)

This essential character of the Iradés, which has been emphasized by several other members of the Ottoman Parliament, is unquestionably borne out by numberless statements of others who, in Turkey as well as in foreign countries, have denounced to the world in general the enormous graspings carried out by Abdul Hamid.

25. With regard to the Iradé of 1909 in particular, it is therefore perfectly absurd to pretend that this Iradé constituted an act of confiscation.

The undersigned restricts himself to adding these few words to the part of his Opinion (para. 44) in which he showed the vanity of such a pretention:—

One may talk of confiscation when legitimately owned property is seized without value being given therefor. There is not, nor can there be, any confiscation when it is a

question of re-taking properties stolen from the State or properties acquired with money which has been stolen from the State.

As Senator Zia-ed-Dine Effendi declared at the sitting of the Senate of the 19th June, 1327/1912, the Sened-i-Khakany (title deed) is itself valueless if the property has been usurped, and the usurper may not benefit by prescription.

26. In his Opinion (para. 46) the undersigned stated why the Iradés of 1908 and 1909 should be considered to be texts which formed part of the Ottoman legislation.

On this point the undersigned feels bound to make special mention here of the numerous provisions of Ottoman budget laws which were set out by way of example in paragraph 47 of the Opinion, with particular attention to the provisions which were set out under heads (*e*) and (*i*) of that paragraph.

In view of these legal provisions, nearly all of which were made under the Iradés, it appears to be impossible (even disregarding the reason given at paragraph 46 of the Opinion) to assert that the Iradés had not the nature of laws of the Ottoman Empire.

In order to deny the Iradés this nature one would have to deny the existence of the said provisions, which would be absurd.

Or else, taking into consideration only those provisions which originated from the Iradés of 1909, one would have to pretend that they were contrary to the Ottoman constitution and therefore void at law.

Now, no authority existed in Turkey which had the power of deciding as to whether texts passed by the Parliament and sanctioned by the Sultan were constitutional or not. These texts were acts of sovereignty, acts of State, unconditionally and completely binding on all persons.

It is obvious that such a power could not be challenged by any foreign authority.

27. Besides, in Turkey everyone knew that the Iradés were in the nature of Ottoman laws; that by virtue of them the iradé-properties formed an integral part of the State property; and that in order to remove from this public property any part of the said iradé-properties it would be necessary, by virtue of the requirements of the Ottoman constitution (Article 100) for such action to be authorized by a law.

Both Sultan Mehmed Vahd-ed-Dine VI and his Government were convinced of this.

Indeed, it is by reason of this conviction that the said Sultan, in his attempt at repealing the Iradés, promulgated not merely an ordinary decree (which would have been sufficient if the Iradés had not had the force of Ottoman laws) but a decree law (provisional law) of the 8th January, 1920, made during the absence of the Chambers and which would require to be submitted for their approval at their next meeting.

28. This Chapter being confined to the Iradés and their nature, the undersigned abstains from showing that the said decree law had been promulgated in obvious violation of the Ottoman constitution and that it was inoperative.

The undersigned considers that he has made this clear in his Opinion (para. 49) and certain remarks will be added on this point in Chapter E below.

D. *The actual appropriation by the Ottoman State of the estates referred to in the Iradés of 1908 and 1909* (para. 47 of the Opinion.)

29. The undersigned considers that he should add to the examples set out in the above paragraph of his Opinion (which established that the Ottoman State had actually assumed ownership of the iradé-properties) some of the many examples which he has found on this point in the Official Ottoman Journal and in other official documents.

30. In the Chamber, Deputy Emroullah Effendi made the following statement:—

> " The possessions of the deposed Sultan have now become national property." (Official Journal of 14th May, 1325/1909, Page 9.)

Statements of the same nature were made by Deputy Ali Osman Effendi and Deputy Ahmed Mahir Effendi (Official Journal of 16th July, 1325/1909, Page 12).

31. In the Chamber the Minister of Finance stated that an article of law existed to permit the sale of the iradé-properties or the settling of immigrants thereon and that regulations had been drawn up for the application of this article.

When a Deputy remarked that this rule was an article of the budget law for the financial year 1326/1910–1911, the Minister declared that this rule remained in force until it was repealed. (Report of the sitting of the Chamber of Deputies of the 11th May, 1327 (1911), page 3256).

32. In many issues of the Official Journal notices have been published by Ottoman authorities relating to the sale or leasing for the benefit of the Ottoman State of a number of properties transferred to it under the Iradés. If necessary, all references on this point can be supplied.

33. The Government of the Turkish Republic itself witnessed that the Iradé-properties had been actually appropriated by the Ottoman State.

This evidence follows obviously from a chapter of the Memorandum dated the 10th February, 1925, which the said Government submitted to the Arbitrator whose duty it was, under Article 47 of the Treaty of Lausanne, to give a ruling on the differences which had arisen between the Council of the Ottoman Public Debt and the States which were the successors of the Ottoman Empire as regards the apportionment of the annuities of the said debt.

Indeed in this chapter the said Government, having maintained that " the amount of the capital of the goods and securities of Abdul Hamid seized by the Government of the Ottoman Empire can not be considered as forming part of the average total revenue of this Empire ", produced in support of this thesis the following argument:—

> " The Council of the Ottoman Public Debt, by relying on the simple fact that the sums " arising out of the goods and securities in question (goods and securities seized at the Palace " of Yildiz) have figured as revenues in the accounts for the financial years 1910–1911 and " 1911–1912, has treated them as such without considering their true character, which does " not allow of their being placed in the same class as the permanent revenues of the State. " One may with advantage refer here to facts of an identical nature which happened at " almost exactly the same time and which nevertheless received different treatment. *Besides " the cash and securities which have just been referred to a considerable number of properties " also belonging to Abdul Hamid have been transferred to the State under the Iradés of the " 27th August, 1324 (1908) and of the 26th April, 1325 (1909). The revenues and not the " capital of these properties were properly included either in the total revenue of the " Ottoman Empire or else in the revenues of the detached territories in which they are " situate.*"

Thus the Government of the Turkish Republic has acknowledged both the existence and object of the Iradés, and the fact that the income of the iradé-properties had been collected by the Ottoman State, and also that the imputation of these incomes carried out as above by the Council had been properly done*.

34. It is important to remark here:—

(*a*) that a law of the 9th August, 1325/1909† ordered payment, after due examination, of the debts contracted by the Civil List in the name of Abdul Hamid and due to the Ministry for Religious Institutions, various commercial Banks, artisans and servants such as gardeners and cooks.

(*b*) that this law also ordered the payment by the State of various other charges which fell on the Civil List.

(*c*) that according to the terms of a declaration of the Minister of Finance there had been paid by that Minister up to the 10th April, 1326/1910—the sum of 450,000 Turkish pounds towards the debts of Abdul Hamid. (Report of the sitting of the Chamber of Deputies of the 10th April, 1326/1910, page 1272.)

(*d*) that another law of the 4th June, 1328/1912, ordered payment after due examination of debts contracted up to the date of the deposition of Abdul Hamid by the Department of the Civil List whose duty was to administer the Imperial properties which had been transferred to the State‡.

(*e*) that successive budget laws have required the balance of the debts of Abdul Hamid outstanding at the end of each year to be settled by means of additional supplies.

Thus one can see that if the Ottoman State appropriated the estates of Abdul Hamid (which were usurped estates), it was generous enough to pay all the properly proved debts of this ex-Sultan.

E. *Decree Law of the 8th January, 1920.* (Para. 49 of the Opinion.)

35. The undersigned annexed to his Opinion a French translation of the decree law of the 8th January, 1920, promulgated by Sultan Mehmed Vahd-ed-Dine VI. This translation was found by the undersigned in the file which was sent to him.

Subsequently the undersigned had the opportunity of consulting the Turkish text of the said decree law, which is published in Dustour, Series 2, Vol. 9, p. 561.

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* The contentions of the Government of the Turkish Republic relating to this disagreement are set out on page 25 of the Award dated 18th April, 1925, of M. Eugene Borel the Arbitrator.

They were rejected by the Arbitrator for the reasons set out on pages 82 and 83 of the Award. These reasons in no way affect the findings of this paragraph.

† Dustour, Series 2, Vol. 1, pages 652–655.

‡ Dustour, Series 2, Vol. 4, pages 552–556.

Having compared the said translation with this Turkish text the undersigned discovered that there were fairly large discrepancies between the two. In consequence the undersigned considers it desirable to set out below the literal and complete translation of the above-mentioned decree law, preceding it with its title:—

" Decree Law relating to the restitution to the Civil List of properties, lands establish-
" ments and concessions which were transferred from the Civil List to the Ministry of
" Finance by virtue of the Imperial Iradés of the 11th* September, 1324/1908 and of the
" 21st* April, 1325/1909.

" *Article 1.*—The properties, lands, farms, establishments and concessions which—with
" Schedules relating thereto—were transferred from the Civil List to the Ministry of Finance
" by virtue of the Imperial Iradés of the 11th* September, 1324, and the 21st* April, 1325,
" are, with the exception of those which were subsequently sold to third parties by the
" Ministry of Finance or distributed among immigrants, transferred and returned to the
" Civil List, a right of appeal to a tribunal being reserved to those persons claiming to have
" rights to the said properties etc.

" *Article 2.*—Income which up to the present time has been collected by the Ministry
" of Finance on the said properties, lands, establishments, etc., will not be handed back. The
" income and the expenses which would have been ascertained up to the end of the financial
" year 335 (1335)/1919-1920, will belong to (and will fall upon) the Ministry of Finance.

" *Article 3.*—The provisions of the agreements made by the Ministry of Finance relating
" to the said properties, lands, farms, etc., shall remain in force and be valid until their
" expiration. However, after the expiration of the present financial year revenues and
" expenses arising out of the application of these agreements shall belong to (and fall upon)
" the Civil List.

" *Article 4.*—The Minister of Finance is responsible for the execution of this decree law.

" *Article 5.*—The provisions of this decree law shall come into force as from the date of its
" publication.

" I have ordained the coming into force of this decree law of which it shall be proposed
" to make a law upon the meeting of the General Assembly (Chamber of Deputies and
" Senate)".

" 8 January 36 (1336)/1920. 16 Rebi-ul-Akhir 38 (1338)." (Here follows the signature of the Sultan and the signatures of the Ministers).

36. Referring to Paragraph 49, head (*d*), of his Opinion, the undersigned feels it desirable briefly to recall the rules accepted in international law as regards certain rights which belong to a State occupying hostile territory—even before this occupation has become a conquest.

According to these rules the occupying State may not only " exclude all actions of others " over the occupied territory and in consequence prohibit the application in such territory of all new legislation (even if properly promulgated by the sovereign State by right), but may also suspend within the said territory the laws of the sovereign State by right made prior to such occupation.

The said rules which conform as much with international practice as with the spirit of the Declaration of Brussels of 1874 and ~~with~~ the Hague Rules of 1899 and 1907, are set out with particular clearness in the celebrated work of Ch. Calvo, entitled " Le Droit international, théorique et pratique ", Vol. 4, p. 212 (para. 2166);

". . . . . The occupation of territory by an enemy has the effect of *suspending* within
" its boundaries the power of the sovereign State. *As from the time when the occupation*
" *commences, laws made by this State no longer come into force;* the authority of all official
" bodies and of all administrations whose centre of activity is not in the occupied territory
" is suspended; the national government can not require the inhabitants to carry out its
" orders . . . ."

It is thus apparent that the decree law of the 8th January, 1920, was of no effect in the territories of the former Ottoman Empire which were occupied by the Allied powers, (particularly in Palestine), even if this decree law had been promulgated in accordance with the Ottoman Constitution and even if the High Commissioners of Great Britain, France and Italy, had not made formal protest against the said decree law.

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* These dates are incorrect.

(*a*) In 1324/1908 a first transfer took place, which was the subject matter of three successive Iradés. The date of the first of these Iradés is unknown; probably this date is only slightly earlier than that of the second Iradé; the date of second Iradé is the 27th August, 1324, which by mistake was given in Article 60 of the Treaty of Lausanne as being the 26th August, 1324; the date of the third Iradé is the 1st September, 1324.

(*b*) In 1325/1909 a second transfer took place which was the subject matter of two Iradés; the date of the first of these Iradés is the 20th April, 1325; this is the date mentioned in Article 60 of the Treaty of Lausanne. The date of the second Iradé is the 26th April, 1325.

(*c*) The texts referred to in Paragraph 22 of this Memorandum are the certified copies of the Iradés of the 27th August, 1324, and of the 20th April, 1325, and certified copies of the respective Schedules accompanying them.

Detailed information as to all of the above-mentioned Iradés was given by the undersigned in his letter of the 27th September, 1938.

37. On the other hand, with reference to the above-mentioned paragraph 49, head (*a*) of his Opinion, the undersigned feels that he should correct certain erroneous declarations which have been made regarding the Ottoman decree laws.

It had been asserted in the Opinion of a Constantinople lawyer, which Opinion is referred to on page 40 of the Opinion of M. Politis, dated the 17th January, 1934, " that no case can be cited in which the (Ottoman) Parliament has overruled the Government by refusing to turn a provisional law (decree law) into a law of the Parliament ".

Now, here are, with references to the Dustour, a few of the numerous cases where the Ottoman Chamber of Deputies has effectively exercised its right of setting aside decree laws:—

(*a*) In a decision of the 19th November, 1916, the Chamber rejected a decree law of the 27th February, 1914, relating to the Health Budget of the Hedjaz. (Dustour, Series 2, Vol. 9, p. 4.)

When rejecting this decree law, the Chamber stated that its decision was on the grounds of the violation of Article 102 of the Constitution.

(*b*) In a decision of the 12th January, 1917, the Chamber rejected a decree law of the 30th November, 1914, the effect of which was to amend the Penal Code. (Dustour, same volume, p. 125.)

(*c*) In a decision of the 21st January, 1917, the Chamber rejected the decree law which granted a supplementary allowance to officers of the Ottoman troops which were engaged in countries allied with Turkey. (Dustour, same volume, p. 142.)

(*d*) In a decision of the 23rd January, 1917, the Chamber rejected a decree law of the 11th October, 1916, relating to the incorporation (in the Army) of young men who had not reached the age required for military service. (Dustour, same volume, p. 142.)

(*e*) In a decision of the 6th February, 1917, the Chamber rejected a decree law of the 3rd May, 1916, relating to the method of collecting tithe. (Dustour, same volume, p. 177.)

(*f*) In a decision of the 15th February, 1917, the Chamber rejected a decree law of the 11th October, 1916, relating to Customs exemption of materials intended for the construction of various railways. (Dustour, same volume, p. 231.)

(*g*) In a decision of the 9th December, 1918, the Chamber rejected two decree laws of the 3rd June, 1918, and 19th August, 1918, which alleged an extraordinary supply of 5,000,000 Turkish pounds for recovered provinces. (Dustour, Series 2, Vol. 11, p. 68.)

When rejecting these two decree laws the Chamber stated that its decision was on the grounds of the violation of Articles 36 and 30 of the Constitution.

38. These decisions also show the incorrectness of the opinion which, on erroneous information was expressed concerning the Ottoman decree laws by the International Court of Justice of the Hague in its judgment of the 17th March, 1934, relating to the matter of lighthouses. (Page 22, lines 39 and 40 of the Judgment.)

39. Moreover, contrary to the declarations in the said Judgment (same page, lines 41 and 42), the Ottoman Government has frequently been reproached on the occasion of decree laws promulgated in violation of Article 36 of the Constitution.

Further the Government, after reproaches made by several Deputies, had to undertake, after embarrassed explanations, to promulgate no further decree laws of this nature.

These reproaches and this undertaking are startlingly apparent when perusing the Report of the session of the Chamber of the 26th November, 1331/1915, pages 74-76.

This Report being particularly edifying the undersigned does not feel it necessary to cite the numerous Reports of the Chamber and of the Senate where these reproaches were formulated, sometimes in very severe terms.

Conclusion.

40. Against the claims of the heirs of Abdul Hamid for the recovery of the land of Mouharraka and in general against the claims of the said heirs with regard to the property and possessions referred to in the Iradés of 1908 and 1909, it appears that the lines of the defence might very briefly be summarized as follows:—

(*a*) The heirs have no title to the lands of Mouharraka.

The deed on which they rely is valueless, having regard especially to the fact that of itself it supplies proof that the said land had been usurped by Abdul Hamid.

The heirs would thus be unable to rely upon the provisions of Article 66 of the Land (Settlement of Title) Ordinance of the 30th May, 1928, the sole object of which is *to restore a lost right* and not to *sanction the violation of a law*.

(*b*) According to the terms of Article 60, paragraph 2 of the Treaty of Lausanne of the 24th July, 1923, the States which succeeded to the former Ottoman Empire have acquired *de plano* (as shown in the Opinion of the undersigned paragraphs 22–31) the ownership of the property and possessions which were transferred to the Ottoman State by the Iradés of 1908 and 1909.

(*c*) The Iradé of 1908 specified the property and possessions which it intended to transfer to the State.

The Iradé of 1909 ordained in a general manner that all property and possessions registered in the name of Abdul Hamid since 1293/1876 should be transferred to the State.

Therefore, in all claims of heirs relating to any property formerly registered in the name of the ex-Sultan, the only duty which falls upon the States which are successors is the following: find out whether the property in question is or is not among those referred to in the Iradés. If so, the descendants have no right thereto. If not, the provisions of the last paragraph of Article 60 above apply.

(*d*) Subsidiarily, the defence should point out that the properties of Abdul Hamid were usurped properties;

that by virtue of the traditional rules which at all times both before and after the Ottoman Constitution regulated the devolution of estates of deposed or deceased Sultans, these estates belonged as of right to the succeeding Sultan;

that for these reasons it would be absurd to pretend that the Iradé of 1909 promulgated by Abdul Hamid's successor was an act of confiscation;

that furthermore the Iradés of 1908 and 1909 were in the nature of acts of State, Ottoman laws;

that against the latter there was no means of appeal to any Court;

that the Ottoman State had taken actual possession of the iradé-properties;

that the Ottoman State paid the debts of Abdul Hamid, although the latter was one of the greatest graspers and tyrants that the world has ever known;

that the Iradés have been sanctioned by several international treaties where application has been made therefor;

that the decree law of the 8th January, 1920, which pretended to set aside the Iradés, was void of all legal value, and that it was inoperative particularly in those territories of the former Ottoman Empire which were occupied by the Allied powers.

The undersigned is confident that the above case duly supported by texts, arguments and evidence, would be upheld by any conscientious tribunal which took the care to assure the triumph of justice and morality.

B. HALADJIAN.

Paris, 15th June, 1939.
26 Rue Nungesser et Coli.

ABDUL HAMID.

NOTE ON THE DEBATES IN THE GRAND NATIONAL ASSEMBLY OF TURKEY ON THE LAW OF THE 3RD MARCH, 1924.

(1) By a Law of the 3rd March, 1924, mentioned in the Opinion of the undersigned dated 12th September, 1936, the Grand National Assembly of Turkey decided—amongst other matters—that the immovable properties registered in the name of the Sultan and situate in the territory of Turkey were acquired by the nation (Article 8) and that the imperial properties previously transferred to the nation were equally acquired by the latter (Article 10).

(2) The undersigned having suggested that it might be useful to consider the discussions as the result of which the said Law was voted, the honourable Treasury Solicitor has been good enough to transmit to the undersigned the official minutes of the sitting of the Grand National Assembly of the 3rd March, 1924, in the course of which those discussions and that vote were taken.

(3) A reading of these minutes has permitted the undersigned to make the following statements:—

(*a*) On the 2nd March, 1924, the Deputy Sheikh Safvet Efendi and several of his colleagues submitted to the Grand National Assembly a draft Law which became the Law of the 3rd March, 1924.

(*b*) In the general discussion of this draft Law the Deputy Ekren Bey made the following declaration relating to Abdul Hamid (page 31 in the minutes):—

> " . . . . the man named Sultan Hamid is one of those criminals whose crime is not limited to destroy Midhad Pasha (the author of the constitution of 1876) and so many other persons. He determined the ruin of the nation. We are still suffering from the evil effects . . . . "

This testimony corroborates those which have been reported in the said Opinion and in the additional memorandum by the undersigned dated 7th April, 1939.

(*c*) The general discussion was relatively short and the undersigned has not discovered in it on the subject of Abdul Hamid any other declaration than that above.

(*d*) Article 1 which relates to the abolition of the Caliphate was the subject of a very long discussion of no interest in regard to the affairs of Abdul Hamid.

Several of the other articles provoked short debates. But Articles 8 and 10 were adopted without discussion.

Thus all it is necessary to note from the discussions relating to the Law of the 3rd March, 1924, is the above recited declaration of Ekren Bey.

B. HALADJIAN.

No. 48. Paris, le 7 Avril, 1939,
26, rue Nungesser et Coli.

ABDUL-HAMID.

MÉMOIRE ADDITIONNEL À LA CONSULTATION DU 12 SEPTEMBRE 1936.

1.—Dans une Consultation en date du 12 Septembre 1936,—relative aux réclamations des héritiers du Sultan Abdul-Hamid II de Turquie, portant sur les biens et propriétés visés à l'article 60, al. 2 du Traité de Lausanne du 24 Juillet 1923—, le soussigné avait exposé les raisons pour lesquelles ces réclamations devaient être considérées comme dépourvues de tout fondement juridique.

2.—Depuis le dépôt de sa Consultation,—dont les conclusions concordent avec celles qui ont été émises dans la Déclaration de Sir Adam Block en date du 29 Mars 1938, dans la Déclaration de Sir Alexander Waugh en date du 3 Mai 1938, et dans la Déclaration de Mr. Henry Pears en date du 14 Juin, 1938—, le soussigné a eu l'occasion d'examiner un grand nombre de documents officiels et d'ouvrages intéressant les dites réclamations.

3.—Les documents examinés sont, notamment: les copies, certifiées conformes aux originaux par l'autorité turque compétente, des Iradés mentionnés dans le susdit article du Traité de Lausanne; les copies, pareillement certifiées, des listes de propriétés, jointes à ces Iradés; les volumes du Dustour (recueil officiel des lois et règlements de la Turquie), postérieurs aux volumes cités dans la Consultation; la collection du Journal officiel ottoman, afférente à la période 1er Mars 1325–3 Avril 1332 (1909–1916) et comprenant les déliberations de la Chambre des Députés et du Sénat; la Revised Edition of the Laws of Palestine; les pièces relatives au procès en cours, qui est intenté par certains héritiers d'Abdul-Hamid en revendication de la terre de Mouharraka sise en Palestine; le Mémoire du 10 Fevrier, 1925, présenté par le Gouvernement de la République turque dans l'Arbitrage, prévu à l'article 47 du Traité du Lausanne au sujet de la répartition de la Dette Publique Ottomane; la Sentence arbitrale du 18 Avril 1925, relative à cette répartition.

De ces documents, une partie a fait l'objet de Notes ou lettres, échangées entre l'honorable Treasury Solicitor et le soussigné.

4.—Parmi les ouvrages examinés, il y a lieu de signaler les suivants:

Life of Abdul-Hamid, by Sir Edwin Pears,
La Politique du Sultan, par Victor Bérard,
Abdul-Hamid intime, par G. Dorys,
Les Turcs. Ce que fut leur Empire . . . , par B. Bareilles,
Abdul-Hamid, par G. Rizas.

5.—Bien que de nouvelles recherches puissent être jugées utiles, le soussigné,—en même tempse que le Treasury Solicitor—a estimé qu'il convenait de réunir, en un même Mémoire, additionnel à la susdite Consultation, les plus saillantes des constatations qui résultent de l'examen des dits documents et ouvrages, et qui corroborent ou complètent, sur plusieurs points, l'argumentation développée dans cette Consultation.

6.—Ces points sont les suivants:

A.—Le mode de dévolution des biens ayant appartenu aux Sultans décédés ou déposés.

B.—Les usurpations commises par le Sultan Abdul-Hamid II.

C.—Les Iradés de 1908 et 1909, et leur caractère.

D.—L'appropriation effective, par l'Etat Ottoman, des biens visés aux Iradés de 1908 et 1909.

E.—Le décret—loi du 8 Janvier, 1920.

A.—*Le mode de dévolution des biens ayant appartenu aux Sultans décédés ou déposés* (para. 15, 16, 17 et 18 da la Consultation).

7.—Au para. 16 de sa Consultation, le soussigné avait défini la règle traditionnelle qui régissait, en Turquie, la dévolution des biens des Sultans décédés ou déposés, et suivant laquelle le Sultan successeur entrait en possession de ces biens sans distinction.

Comme preuve de cette règle, le soussigné avait notamment cité, au para. 18 de la Consultation, le décret—loi du 8 Janvier 1920, promulgué par le Sultan Mehmed Vahd-ed-Dine VI, aux termes duquel ce Sultan avait revendiqué les " propriétés-irades " (propriétés visées dans les Iradés de 1908 et 1909), non point pour les enfants d'Abdul-Hamid—lequel était décédé en 1918—mais pour lui-même en sa qualité de Sultan et de Chef de la Famille impériale, possédant *seul* le droit de jouissance, d'administration et de *disposition* de ces biens.

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En note du susdit para. 18, le soussigné avait jugé utile de citer aussi à ce propos, de nombreux para. de la Consultation du 10 Aôut 1925 que MM. Roguin et Pellis avaient fournie audit Sultan, à l'appui d'une revendication ultérieure de ce dernier, soumise à Sa Majesté Britannique.

Dans ce para. 18, le soussigné avait même employé plusieurs des termes dont s'étaient servis MM. Roguin et Pellis pour déterminer la condition juridique du susdit Sultan.

8.—Voici d'autres témoignages qui démontrent l'existence et la pratique de ladite règle, en tout temps, avant comme après la restauration, en Juillet 1908, du régime constitutionnel dans l'Empire ottoman:

(*a*) Le député Ebouzia Tewfik Bey, grand journaliste et écrivain éminent, a déclaré à la Chambre:

" . . . . En vertu d'une règle existant de tout temps, en cas de déposition d'un " Sultan, il y a *toujours* transmission à l'occupant du trône. La succession du Sultan " précédent appartient en *totalité* au Sultan qui est monté sur le trône . . . . *C'est notre* " *règle historique* . . . ." (Journal officiel du 25 Avril, 1325/1909, p. 2.)

(*b*) Au Sénat, à la suite d'une observation d'un sénateur grec, insinuant que la mainmise, par l'Etat, sur les joyaux qui avaient appartenu à Abdul-Hamid, pouvait avoir le caractère d'une confiscation, l'ancien Grand-Vézir Hussein Hilmi Pacha, président de la Commission sénatoriale des Finances, a fait la décalaration ci-après:

" Il n'y a point de confiscation en l'espèce. Après la déposition de l'ex-Sultan " (Abdul-Hamid), les objets et joyaux appartenant à sa personne *sont devenus la* " *propriété de S.M.I. le Sultan. Ces joyaux ont été abandonnés par S.M.I. le Sultan* " *tout comme les autres biens et terres qui ont été abandonnés au Ministère des Finances.* " On ne saurait parler de confiscation. Retirez ce mot. *Il n'y a pas d'usurpateur dans* " *le Gouvernement.*"

Sur cette déclaration, un autre sénateur, Réchid Akif Pacha, a fait observer que la question n'était même pas à discuter.

(Compte-rendu de la séance du Sénat, du 14 Mars 1327/1911, pp. 625 et 626.)

(*c*) Au Sénat, le sénateur Ahmed Riza Bey, ancien Président de la Chambre, a déclaré:

" . . . . Ainsi que vous le savez, chez nous, à la mort d'un Sultan, *ses biens et* " *propriétés ne sont pas dévolus à ses enfants*, comme ils le sont dans certains autres " Etates . . . ." (Compte-rendu de la séance du Sénat, du 28 Décembre, 1331/1915, p. 204.)

9.—A ces témoignages, il convient de joindre ceux qui sont donnés dans la Déclaration de Sir Adam Block, para. 4, dans la Déclaration de Sir Alexander Waugh, para. 13, et dans la Déclaration de Mr. Henry Pears, para. 7.

B.—*Les usurpations commises par le Sultan Abdul-Hamid* (para. 42 de la Consultation).

10.—Dans plusieurs séances de la Chambre, les usurpations d'Abdul-Hamid ont été mises en évidence. Et, innombrables sont les publicistes, de nationalité diverse, qui en ont témoigné, même lorsque Abdul-Hamid régnait sur l'Empire ottoman.

11.—(*a*) Le député Mustapha Assim Efendi. Vice-Président de la Chambre, a déclaré:

". . . . Les fermes inscrites au nom d'Abdul-Hamid étaient des propriétés " usurpées . . . ." (Journal officiel du 14 Mai 1325/1909, p. 8.)

(*b*) En termes particulièrement précis et saisissants, le député Emroullah Efendi, rapporteur de la Commission financière, a relevé les énormes usurpations, faits par Abdul-Hamid.

Il a spécifié que la majeure partie des propriétés d'Abdul-Hamid, qui furent abandonnées par la suite à l'Etat, étaient des propriétés de l'Etat, que ces propriétés avaient été acquises par la Liste Civile " à valoir sur les montants devant lui revenir à l'avenir "; que ces acquisitions, ainsi faites, avaient eu lieu à des prix grandement inférieurs à la valeur desdites propriétés; que, par exemple, une ferme (de l'Etat) dans la province de Janina, rapportant 40,000 Livres Turques *par an* avait été achetée au prix de 20,000 Livres Turques.

Il a exposé que, sur less 400,000 Livres Turques, que produisaient annuellement les propriétés transférées à l'Etat aux termes de l'Iradé de 1908, 360,000 Livres Turques étaient des revenues de l'Etat*.

* Ces affirmations sont expressément et partiellement confirmées par des paragraphes mêmes de l'Iradé de 1908 et de la liste jointe à cet Iradé.

Il a déclaré que, dans les fermes d'Abdul-Hamid, l'aghnam (taxe sur les moutons), l'impôt immobilier et les dîmes (dûs par les tenanciers et revenant à l'Etat) étaient perçus en totalité par la Liste Civile*.

Il a ajouté que même les sommes, directement perçus du trésor par Abdul-Hamid, dépassaient de beaucoup le montant de l'allocation impériale; que, chaque fois que les traitments des fonctionnaires étaient payés ou qu'un emprunt était conclu, la Liste Civile prenait de l'argent (en plus de l'allocation impériale); et qu'il n'etait pas possible de repousser les exigences de ce Département qui—selon les termes usités par Emroullah Efendi—" etait fait pour détruire la nation."

Il a évalué à 30,000,000 Livres Turques le montant de la créance de la nation sur Abdul-Hamid.

(Journal officiel du 17 Juillet 1325/1909, pp. 4 et 5.)

12.—Mais, Abdul-Hamid ne se bornait pas à accaparer les biens et ressources de l'Etat lui-même.

Ses accaparements s'étendaient encore, notamment aux ressources de la Préfecture de la ville de Constantinople.

A la suite d'une interpellation du député Ilhamy Bey, le Préfet de Constantinople, Hazim Bey, a produit, devant la Chambre, une liste énonçant les dépenses que la Préfecture avait dû effectuer, sur son maigre budget, au profit d'Abdul-Hamid.

Le montant total de ces dépenses dépassait 334,000 Livres Turques.

La dite Liste est particulièrement édifiante.

Par exemple, on y voit que Abdul-Hamid faisait payer par la Préfecture le prix d'immeubles expropriés et ajoutés aux jardins impériaux, ainsi que la taxe de transfert y afférente; qu-il faisait payer par le Préfecture les dépenses nécessitées par la construction d'un chalet dans ces jardins, le prix d'une ferme achetée au nom de la Liste Civile—de même que la taxe de transfert de la dite ferme,—les dépenses afférentes à la construction d'un Konak (hôtel particulier) pour Fehim Pacha, célèbre espion et assassin aux gages d'Abdul-Hamid, et même le prix de l'eau consommée au palais de Yildiz (résidence ordinaire d'Abdul-Hamid) et le prix du gaz d'élairage consommé dans les palais impériaux. (Journal officiel du 1er Juin 1325/1909, pp. 12 et 13.)

13.—Dans l'ouvrage intitulé " Life of Abdul-Hamid " et publié par feu Sir Edwin Pears qui vivait à Constantinople au temps d'Abdul-Hamid et qui était un avocat de très grand renom et de haut caractère, les exactions et usurpations d'Abdul-Hamid sont mises en relief avec une particulière netteté.

Voici quelques extraits de ce remarquable ouvrage:

" It (the Department of the Civil List) at least caused to be known when great sums " which ought to have been employed for the public service of the State, were abstracted " for the private use of the Palace. In one respect, indeed, the Civil List Department " which was under the direct supervision of the Sultan, worked against the general public " interest . . . ." (p. 25).

" He (Abdul-Hamid) ruthlessly appropriated houses and grounds belonging to his " subjects, including two Christian cemeteries (for the gardens of the Palace of Yildiz) " (p. 117).

" Abdul-Hamid came into conflict with the British and other ambassadors through his " efforts at land-grabbing.

" During the years 1882–1890 the Civil List, acting under the orders of Abdul-Hamid " dispossessed hundreds of peasants, occupants of lands throughout the country, in order " to add such lands to the private domain of the Sultan. It was remarked that these attempts " were first made in places where there were no foreign consuls, and upon Ottoman subjects " only. The intention was to prevent publicity to what in many cases was nothing short " of robbery . . . .

" After a while the creatures of Yildiz became bold enough to seize land belonging to " foreign subjects, and by 1890 there was probably no embassy that was not troubled with " complaints from its own subjects of attempts to steal their land with the building " upon it . . . ." (p. 121).

" Abdul-Hamid always loved money, and his private income had become enormously " increased by his employment of those who were ready to augment it at the cost of the " public treasury . . . ." (p. 122).

* Ces affirmations sont expressément et partiellement confirmées par des paragraphes mêmes de l'Iradé de 1908 et de la liste jointe à cet Iradé.

14.—Voici maintenant le témoignage de M. Victor Bèrard, membre de l'Institut de France, dans son ouvrage ayant pour titre " La politique du Sultan":

". . . . L' administration n'est qu'une pompe à impôt ou à rançons. Une partie infime " de cet argent est dépensée pour les besoins locaux. Le reste prend la route de la capitale " ou, plus exactement, du Palais . . . .

" Plus de deux cent mille hommes, certainment, vivent de la peur du maître et touchent, " pour leur dévoûment ou simplement leur indifférence, un traitement régulier. . . . .

" Chaque jour, les préfectures reçoivent du Palais de nouvelles demandes d'argent . . . ." (p. 41).

" Bon an mal an, le Palais engloutit plus de cent cinquante millions; la Liste Civile ne " pourrait pas subvenir à la moitié de ces dépenses.

" Le Sultan s'est d'abord efforcé d'augmenter ses revenus personnels en augmentant " ses propriétés particulières. Il a fait passer dans son domaine privé les terres de la " couronne, de l'État, des mosquées, des tekkés (couvents), des fondations pieuses (en rejetant " sur l'Etat les charges de ces fondations), et les biens des condamnés à mort, des exilés et " des suspects. Il est devenu ainsi le propriétaire du sixième au moins de son Empire.

" Les champs les plus fertiles de grandes plaines asiatiques et européennes, autour de " Brousse, Aïdin, Serrès et Avlona, lui appartiennent aujourd'hui. Il est propriétaire de " presque toute la Mésopotamie; il a usurpé la moitié du vilayet de Bagdad, c'est-à-dire les " deux empires de Ninive et de Babylone . . . .

" Puis il a cherché des bénéfices . . . . dans une série d'emprunts ou des concessions " aux syndicats financiers, régie des tabacs, quais, chemins de fer, monopoles. Chaque " opération de cette sorte lui a rapporté une somme assez forte,—toujours aux dépens de " l'État, dont elle a augmenté les charges ou diminuait les revenus.

" Puis, vers 1887, le Ministre de la Liste Civile, Agop Pacha, invente une combinaison " assez ingénieuse . . . . Grâce à lui, le Sultan prélève sur les stipendiés de l'Etat une " dîme qui peut aller jusqu'à 30 per cent. et qu'il fait varier à sa fantaisie, suivant les besoins " du moment; il est le maître du cours, puisque, en retardant ou en accélérant le paiement " des mandats, il fait hausser ou baisser l'escompte " (pp. 100-102).

" Les besoins du Palais grandissant toujours—il a mis la main sur certains revenus " publics . . . ." (p. 103).

15.—On trouve des constatations du même ordre dans l'ouvrage G. Dorys, intitulé " Abdul-Hamid intime ":

" Il (Abdul-Hamid) en agrandit le parc (du palais de Yildiz) et, de la colline de " Béchiktache, l'étendit jusqu'à celle d'Ortakeuy, achetant, mais surtout accaparant " beaucoup de terrains publics et privés, démontrant, par ces procédés, toute la justesse du " proverbe arabe qui dit: Soyez le voisin du feu plutôt que celui du Sultan . . . ." (p. 88).

" Ainsi qu'on vit, au temps de la décadence de Rome, les provinces travailler uniquement " pour nourrir leurs Césars, de même aujourd'hui tout le labeur de l'Empire ottoman et de sa " capitale est absorbé par le Yildiz d'Abdul-Hamid . . . ." (pp. 114 et 115).

16.—Dans son ouvrage, " Les Turcs—Ce qui fut leur empire . . . .", M. Bertrand Bareilles a fourni quelques précisions sur les procédés employés par le Ministre de la Liste Civile pour augmenterles ressources de son maître Abdul-Hamid:

" Il (le Ministre) accrut tout d'abord les revenus de la Liste Civile d'une quinzaine de " millions en recourant à un expédient fort simple. Détachant du fisc les meilleures terres " de l'Empire, il en versa les impôts dans les caisses privées de son maître. La confiscation " des meilleures fermes, qu'il paya en décorations et en pensions sur les caisses de l'Etat, " augmentèrent également ses revenus. A l'occasion, et pour faire face à des besoins " urgents, il puisait à pleines mains dans les caisses des retraités et de l'instruction publique. " Dans tout emprunt, il se réservait une part personnelle, dont il abandonnait généreusement " une parcelle à son entourage . . . ." (p. 197).

17.—Des précisions analogues sont exprimés dans l'ouvrage de M. G. Rizas, " Abdul-Hamid " (p. 30).

18.—Ces témoignages, qui sont pleinement confirmés par les Déclarations précitées de Sir Adam Block, de Sir Alexander Waugh et de Mr. Henry Pears, et dans le sens desquels on pourrait produire une foule d'autres témoignages, démontrent, tout comme les multiples constatations faites au Parlement ottoman, le caractère purement usurpatoire des acquisitions d'Abdul-Hamid.

19.—A ces témoignages et constatations, il y a lieu d'ajouter la preuve qui est fournie par le libellé même du titre invoqué, dans le procès en cours, par les héritiers d'Abdul-Hamid, pour revendiquer la possession de la terre Miri (terre du Domaine public) de Mouharraka.

En effet, ainsi qu'il est rapporté dans le jugement de Mr. Justice Cressall, du 30 Juillet 1937 (p. 2), ce titre porte, en regard des mots " Nature of transaction ", la clause suivante:

" By fresh grant, by virtue of written authority emanating from the Nazareti Defter " Khakany (supreme authority for the registration of lands), dated 15th December, 1302, " No. 61 ".

Cette clause montre, à l'évidence, que la délivrance dudit titre à Abdul-Hamid a eu lieu en contravention à l'article 3 du Code des Terres, qui ordonne le paiement d'un " mouaddjélé " (prix payable comptant) en cas de concession d'une terre Miri, et en contravention à l'article 8 du même Code, qui ordonne que les terres Miri doivent être attribuées aux habitants locaux, de la manière qui y est définie.

L'acquisition de ladite terre par Abdul-Hamid constitue ainsi une illustration frappante des accaparements commis par lui, sans nul égard à la législation en vigueur et au détriment du trésor et de ses sujets.

Il semble inadmissible que les principes, qui sont institués, en pays civilisés, pour la protection des propriétes légitimement acquises, puissent être invoqués et appliqués pour consacrer judiciairement de tels accaparements.

Spécialement, il semble inadmissible que, dans le présent procès, l'on puisse se prévaloir de l'article 66 de la Land (Settlement of Title) Ordinance du 30 Mai 1928, qui est fait pour assurer la restauration d'un *droit*, et certainement non pour permetter aux héritiers d'un usurpateur de recouvrer une possession jadis acquise en violation du droit.

C.—*Les Iradés de 1908 et 1909, et leur caractère* (para. 4, 5, 42, 43, 44, 46 et 47 de la Consultation).

20.—Dans sa Consultation, le soussigné avait exposé la substance des Iradés de 1908 et 1909, et fourni, en annexe, la traduction française du dernier des textes ayant pour objet le transfert de propriétés impériales, effectué en 1908.

21.—Au cours de l'instance engagée devant la Land Court of Jaffa, les représentants du Gouvernement palestinien avaient produit, en Mai 1937, les copies, certifiées par le Département des Archives du Foreign Office, des traductions française et englaise des deux Iradés et listes les accompagnant,—Iradés et listes dont les textes turcs avaient été communiqués à la Conférence de Lausanne par la Délégation turque et qui avaient été retournés à cette Délégation.

22.—Pendant la même année 1937, des recherches, effectuées au Ministère français des Affaires Etrangères, ont mis à jour les copies en langue turque de ces Iradés et Listes, qui avaient été obtenues par l'Ambassadeur de France à Ankara et qui étaient jointes à la lettre de ce dernier à son Ministre, en date du 8 Mars 1930.

Ces copies sont certifiées conformes aux originaux par le Département des Archives de la Présidence du Conseil de la République turque.

Le Gouvernement palestinien est en possession des photos des dites copies, lesquelles photos sont certifiées par le Ministre français des Affaires Etrangères et accompagnées de leurs traductions notariées, en langue anglaise.

Par les attestations dont elles sont revêtues, ces photos ne constituent pas des " copies of copies ", mais la reproduction officielle des originaux eux-mêmes.

Partant, elles ont exactement la même valeur juridique que ces originaux, et déterminent, authentiquement, toute l'étendue des transferts opérés en 1908–1909.

23.—La terre de Mouharraka, qui est l'objet de la présente action, étant comprise parmi les biens et propriétés transférés à l'Etat en vertu de l'Iradé de 1909, seuls doivent être produits, dans la procédure relative à ladite action, cet Iradé et la liste qui y est jointe.

24.—Il a été exposé, dans la Consultation (para. 42–44), que les Iradés de 1908 et 1909 étaient des actes de réparation ou de restitution.

Ce caractère des Iradés est signalé, avec une particulière précision, par le Député Emroullah Efendi qui a déclaré:

" Le transfert au Ministère des Finances des propriétés, terres, et concessions minières et autres concessions, que le Sultan déposé avait fait passer en son nom depuis 1293/1876, est une opération de *restitution de droits*, de retour au propriétaire des droits, à celui qui en était le propriétaire originel." (Journal Officiel du 17 Juillet 1325/1909, p. 9.)

Ce même caractère des Iradés,—dont ont témoigné plusieurs autres membres du Parlement ottoman—,découle, en outre, indiscutablement, des innombrables témoignages de ceux qui, en Turquie comme dans les pays étrangers, ont dénoncé au monde les immenses accaparements perpétrés par Abdul-Hamid.

25.—En ce qui concerne spécialement l'Iradé de 1909, il est donc parfaitement absurde de prétendre que cet Iradé constituait un acte de confiscation.

Aux lignes par lesquelles le soussigné a démontré—dans sa Consultation (para. 44), l'inanité d'un telle prétention, le soussigné se borne à ajouter ici ces quelques mots:

On peut parler de confiscation, lorsque, sans en payer la contrevaleur, mainmise est faite sur une propriété légitimement possédée. Il n'y a pas, il ne peut y avoir

confiscation, lorsqu'il s'agit de reprise de propriétés volées à l'Etat ou de propriétés acquises avec de l'argent volé à l'Etat.

Comme l'a déclaré le sénateur Zia-ed-Dine Efendi, à la séance du Sénat du 19 Juin 1328/1912, le sened-i-Khakany (titre de propriété) est lui-même sans valeur, si la propriété a été usurpée, et, l'usurpateur ne peut bénéficier de la prescription.

26.—Dans sa Consultation (para. 46), le soussigné a dit pourquoi les Iradés de 1908 et 1909 devaient être considérés comme des textes faisant partie de la législation ottomane.

Ici, le soussigné croit devoir insister, à ce propos, sur les nombreuses dispositions des lois budgétaires ottomanes, qui ont été énumérées, à titre d'exemples, au para. 47 de la Consultation, spécialement sur les dispositions qui ont été rappelées aux litt. (*e*) et (*i*) de ce para.

En présence de ces dispositions légales, dont presque toutes ont été prises en exécution des Iradés, il semble impossible,—même en faisant abstraction du motif énoncé au para. 46 de la Consultation—, de soutenir que les Iradés n'avaient pas le caractère de lois de l'Empire ottoman.

Pour dénier aux Iradés ce caractère, il faudrait nier l'existence desdites dispositions,—ce qui serait absurde.

Ou bien, visant uniquement celles de ces dispositions, qui avaient pour origine l'Iradé de 1909, il faudrait prétendre qu'elles étaient contraires à la Constitution ottomane, et donc nulles en droit.

Or, il n'existait, en Turquie, aucun organe ayant le pouvoir de statuer sur la constitutionnalité ou l'anticonstitutionnalité des textes votés par le Parlement et sanctionnés par le Sultan. Ces textes étaient des actes de souveraineté, des Acts of State, inconditionnellement et absolument obligatoires pour tous.

Il est évident qu'un tel pouvoir ne saurait être revendiqué par une autorité étrangère quelconque.

27.—D'ailleurs, en Turquie, tout le monde savait que les Iradés avaient le caractère de lois ottomanes; que, par eux, les propriétés-iradés faisaient partie intégrante du domaine de l'Etat; et que, pour pouvoir distraire de ce domaine une partie quelconque desdites propriétés-iradés, il fallait,—conformément aux exigences de la Constitution ottomane (art. 100)—, qu'une loi y autorisât.

Specialement, telle était la conviction du Sultan Mehmed Vahd-ed-Dine VI, ainsi que de son gouvernement.

En effet, c'est en raison de cette conviction, que ledit Sultan, dans sa tentative d'abroger les Iradés, promulgua, non point un simple décret,—qui eût été suffisant si les Iradés n'avaient pas le caractère de lois ottomanes—, mais un décret-loi (loi provisoire), du 8 Janvier 1920, pris en l'absence des Chambres et devant être soumis à l'approbation de celles-ci lors de leur prochaine réunion.

28.—Le présent chapitre étant consacré aux Iradés et à leur caractère, le soussigné s'abstient d'y démontrer que ledit décret-loi avait été promulgué en violation manifeste de la Constitution ottomane et qu'il était inopérant.

Dans sa Consultation (para. 49), le soussigné croit avoir fait cette démonstration à laquelle quelques observations seront ajoutées au chapitre E ci-après.

D.—*L'appropriation effective, par l'Etat ottoman, des biens visés aux Iradés de 1908 et 1909* (para. 47 de la Consultation).

29.—Aux exemples, cités dans le para. ci-dessus de sa Consultation et établissant que l'Etat ottoman avait effectivement fait acte de propriétaire des propriétés—iradés, le soussigné croit utile de joindre quelques—unes des très nombreuses indications qu'il a recueillies à ce propos dans le Journal officiel ottoman et dans d'autres documents officiels.

30.—A la Chambre, le député Emroullah Efendi a fait la déclaration suivante.

> " La fortune du Sultan déposé est devenue maintenant la propriété de la nation ". (Journal officiel du 14 Mai 1325/1909, p. 9.)

Des déclarations de même sens ont été émises par les députés Ali Osman Efendi et Ahmed Mahir Efendi. (Journal officiel du 17 Juillet 1325/1909, p. 12.)

31.—A la Chambre, le Ministre des Finances a spécifié qu'un article de loi existait pour la vente des propriétés—iradés ou pour y installer des immigrés, et que des Instructions avaient été élaborées pour les modalités d'application de cet article.

Un député ayant fait observer que cet article était un article de la loi sur le budget de l'année 1326/1910–1911, le Ministre a déclaré que cet article demeurait en vigueur aussi longtemps qu'il n'aurait pas été abrogé. (Compte-rendu de la séance de la Chambre des Députés, du 11 Mai 1327 (1911) p. 3256.)

32.—Dans de très nombreux numéros du Journal officiel sont publiés des avis, émanant des autorités ottomanes et relatifs à la vente ou à la location, au profit de l'Etat ottoman, d'une foule de propriétés transférées à ce dernier en vertu des Iradés.

Au besoin, il serait fourni toutes références à ce sujet.

33.—Le gouvernement de la République turque a ~~lui-même~~ témoigné que les propriétés-iradés avaient été effectivement appropriées par l'Etat ottoman.

Ce témoignage découle, de façon manifeste, d'un chapitre du Mémoire, en date du 10 Février 1925, que ledit gouvernement avait soumis à l'Arbitre qui avait pour mission,—en vertu de l'article 47 du Traité de Lausanne—de trancher les différends surgis entre le Conseil de la Dette Publique Ottomane et les Etats successeurs de l'Empire ottoman, quant à la répartition des annuités de ladite Dette.

En effet, dans ce chapitre, ledit gouvernement,—ayant soutenu que " le montant du capital des biens et valeurs d'Abdul-Hamid, saisis par le gouvernement de l'Empire ottoman ne peut pas être considéré comme faisant partie du revenu moyen total de cet Empire—a produit, à l'appui de cette thèse, l'argumentation suivante:

> " Le Conseil de la Dette Publique Ottomane, en se basant sur le simple fait que les " sommes provenant des biens et valeurs dont il s'agit (biens et valeurs saisis au Palais de " Yildiz) ont figuré comme des revenus dans les comptes des exercices 1910–11 et 1911–12, " les a considérés comme tels, sans tenir compte de leur véritable caractère, qui cependant " ne permettait pas de les placer dans la même catégorie que les revenus permanents de " l'Etat. Il importe de mentionner à cette occasion des faits d'une nature identique survenus " presque à la même époque et qui ont néanmoins reçu un traitement différent. *En effet,* " *outre les espèces et valeurs qui viennent d'être mentionnés, un nombre considérable de* " *propriétés appartenant également à Abdul-Hamid avaient été transférées à l'Etat en vertu* " *des Iradés du 27 Août 1324 (1908) et du 26 Avril 1325 (1909). Les revenus et non pas le* " *capital de ces propriétés furent compris, avec raison, soit dans le revenu total de l'Empire* " *ottoman, soit dans les revenus des territoires détachés où elles sont situées.*"

Ainsi, le Gouvernement de la République turque a attesté—aussi bien que l'existence et l'objet des Iradés—le fait que les revenus des propriétés—iradés avaient été perçus par l'Etat ottoman, et que d'autre part, l'imputation de ces revenus, opérée comme ci-dessus par le Conseil de la Dette, avait été faite avec raison*.

34.—Il y a lieu de noter ici:

(*a*) qu'une loi du 9 Août 1325/1909† a ordonné le paiement, après vérification, des dettes contractées au nom d'Abdul-Hamid par la Liste Civile envers le Ministère des Fondations Pieuses, diverses banques, commerçants, artisans et des domestiques comme les jardiniers et cuisiniers;

(*b*) que cette loi a également ordonné le paiement par l'Etat de diverses autres charges qui incombaient à la liste Civile.

(*c*) qu'aux termes d'une déclaration du Ministre des Finances, il avait été payé par le Ministère des Finances,—jusqu'au 10 Avril 1326/1910,—la somme de 450,000 livres turques au titre des dettes d'Abdul-Hamid.

(Compte-rendu de la séance de la Chambre des Députés du 10 Avril 1326/1910, p. 1272.)

(*d*) qu'une autre loi, du 4 Juin 1328/1912 a ordonné le paiement, après vérification, des dettes contractées, jusqu'à la date de la déposition d'Abdul-Hamid, par le Bureau de la Liste Civile, chargé de l'administration des propriétés impériales tranférées à l'Etat‡.

(*e*) que des lois budgétaires successives ont ordonné que le solde—constaté à la fin de chaque année, des dettes d'Abdul-Hamid—sera réglé au moyen de crédits additionnels.

On voit ainsi que si l'Etat ottoman s'est approprié les biens d'Abdul-Hamid—qui étaient des biens usurpés—il a eu la générosité de payer toutes les dettes vérifiées de cet ex-Sultan.

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* Les Conclusions du Gouvernement de la République turques, relatives à ce différend, sont reproduites à la page 25 de la Sentence, du 18 Avril 1925, de M. Eugène Borel, Arbitre.

Elles ont été rejetées par l'Arbitre pour les motifs énoncés aux pages 82 et 83 de la Sentence. Cec motifs n'affectent en rien les constatations faites au présent para.

† Dustour, Série II, Vol. I, pp. 652-655.

‡ Dustour, Série II, Vol. IV, pp. 552–556.

E.—*Le Décret-loi du 8 Janvier 1920* (para. 49 de la Consultation).

35.—Le soussigné avait joint à sa Consultation une traduction française du décret-loi du 8 Janvier 1920, promulgué par le Sultan Mehmed Vahd-ed-Dine VI.

Cette traduction avait été trouvée par le soussigné dans le dossier qui lui avait été transmis.

Ultérieurement, le soussigné eut la possibilité de consulter le texte turc dudit décret-loi, qui est publié au Dustour, Série II, Vol. IX, p. 561.

Ayant confronté ladite traduction avec ce texte turc, le soussigné a constaté, entre les deux, des différences assez importantes.

En conséquence, le soussigné croit utile de donner ci-dessous la traduction littérale et intégrale du décret-loi susmentionné en la faisant précéder du titre de ce décret-loi:

" Décret-loi relatif à la restitution à la Liste Civile des propriétés, terres, établissements " et concessions qui avaient été transférés de la Liste Civile au Ministère des Finances en " vertu des Iradés impériaux du 11* Septembre 1324/1908 et du 21* Avril 1325/1909.

" Art. 1 Les propriétés, terres, fermes, établissements et concessions, qui avaient été " transférés—avec listes y relatives—de la Liste Civile au Ministère des Finances en vertu " des Iradés impériaux du 11* Septembre 1324 et du 21* Avril 1325, sont transférés et " restitués à la Liste Civile, à l'exception de ceux qui ont été vendus et transférés " ultérieurement à des tiers par le Ministère des Finances ou distribués aux immigrés, étant " réservé le droit de recours aux tribunaux de ceux qui prétendent y avoir des droits.

" Art. 2. Les revenus, qui ont été perçus jusqu'à présent par le Ministère des Finances " sur lesdites propriétés, terres, établissements et autres, ne seront pas rendus. Par contre, " les revenus et dépenses, qui auront été constatés jusqu'à l'expiration de l'année financière " 335 (1335)/1919–1920, appartiendront (et incomberont) au Ministère des Finances.

" Art. 3. Les dispositions des conventions faites par le Ministère des Finances et " concernant les susdites propriétés, terres, fermes et autres seront en vigueur et valables " jusqu'à l'expiration de leur durée. Cependant, après l'expiration de la présente année " financière, les revenus et dépenses provenant de l'application de ces conventions " appartiendront (et incomberont) à la Liste Civile.

" Art. 4. Le Ministre des Finances est chargé de l'exécution du présent décret-loi.

" Art 5. Les disposition du présent décret-loi sont en vigueur à partir de la date de " son publication.

" J'ai ordonné la mise en vigueur du présent décret-loi dont il sera proposé de faire une " loi lors de la réunion de l'Assemblée Générale (Chambre des Députés et Sénat)."

" 8 Janvier 36 (1336)/1920 16 Rébi-ul-Akhir 38 (1338) " (suivent la signature du Sultan et les signatures des Ministres).

36.—Se référant au para. 49, litt. (*d*) de sa Consultation, le soussigné croit utile de rappeler brièvement les règles admises en droit international, en ce qui touche certains droits qui appartiennent à l'Etat occupant un territoire ennemi—même avant que l'occupation ne se transforme en conquête.

Conformément à ces règles, l'Etat occupant peut non seulement " exclure toute action d'autrui " sur le territoire occupé, et, par conséquent, interdire l'application, dans ce territoire, de toute nouvelle législation,—même régulièrement promulguée par l'Etat souverain en droit, mais encore, il peut suspendre, dans ledit territoire, les lois de l'Etat souverain en droit, antérieures à l'occupation.

Les dites règles, qui sont conformes tant à la pratique internationale qu'à l'esprit de la Déclaration de Bruxelles de 1874 et des Règlements de la Haye de 1899 et de 1907, sont exposées, avec une particulière netteté, dans le célèbre ouvrage de Ch. Calvo, " Le Droit international théorique et pratique ", Vol. IV, p. 212 (para. 2166):

" . . . . L'occupation d'un territoire par l'ennemi a pour effet de *suspendre* dans ses " limites le pouvoir le l'Etat souverain. *A partir du moment où commence l'occupation,* " *les lois que rend cet Etat n'y entrent plus en vigueur;* l'autorité de tous les corps constitués, " de toutes les administrations dont le siège n'est pas sur le territoire occupé est suspendue; le " gouvernement national ne peut exiger des habitants l'exécution de ses ordres . . . . "

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* Ces dates sont inexactes:

(*a*) Il y a eu, en 1324/1908, un premier transfert qui a fait l'objet de trois Iradés successifs.

La date du premier de ces Iradés est inconnue. Très probablement, cette date est de peu antérieure à celle du deuxième Iradé.

La date du deuxième Iradé est le 27 Août 1324, qui, par erreur, a été indiquée, à l'article 60 du Traité de Lausanne, comme étant le 26 Août, 1324.

La date du troisième Iradé est le 1er Septembre 1324.

(*b*) Il y a eu, en 1325/1909, un deuxième transfert qui a fait l'objet de deux Iradés.

La date du premier de ces Iradés est le 20 Avril 1325.

C'est cette date qui est indiquée à l'article 60 du Traité de Lausanne.

La date du deuxième Iradé est le 26 Avril 1325.

(*c*) Les textes visés au para. 22 du présent Mémoire sont les copies certifiées des Iradés du 27 Août 1324 et du 20 Avril 1325, et les copies certifiées des listes qui les accompagnent respectivement.

Des indications détaillées sur tous les Iradés sudits ont été fournies par le soussigné dans sa lettre du 27 Septembre 1938.

On voit ansi que le décret-loi du 8 Janvier 1920 était de nul effet dans les territoires de l'ancien Empire ottoman occupés par les Puissance alliées—spécialement en Palestine—même si ce décret-loi avait été promulgué conformément à la Constitution ottomane, et même si les Hauts-Commissaires de Grande-Bretagne, de France et d'Italie n'avaient pas formellement protesté contre ledit décret-loi.

37.—D'autre part, se référant au susdit para. 49 litt. (*a*) de sa Consultation, le soussigné croit devoir faire justice de certaines déclarations erronées qui ont été émises au sujet des décrets-lois ottomans.

Il a été soutenu, dans une Consultation fournie par un avocat de Constantinople et qui est mentionnée à la page 40 de la Consultation de M. Politis en date du 17 Janvier 1934, " qu'on ne peut pas citer un cas où le Parlement (ottoman) ait " désapprouvé le Gouvernment en refusant de transformer en loi du Parlement une loi " provisiore " (décret-loi).

Or, voici, avec références au Dustour, quelques-uns des nombreux cas où la Chambre des Députés ottomane a effectivement exercé son droit d'annuler les décrets-lois:

(*a*) Par une décision du 19 Novembre 1916, la Chambre a rejeté un décret-loi du 27 Février 1914, relatif au budget sanitaire du Hedjaz.

(Dustour, Série II, Vol. IX, p. 4.)

Elle l'a rejeté en spécifiant que sa décision était motivée par la violation de l'article 102 de la Constitution.

(*b*) Par une décision du 12 Janvier 1917, la Chambre a rejeté un décret-loi du 30 Novembre 1914, portant modification du Code Pénal.

(Dustour, même Vol. p. 125.)

(*c*) Par une décision du 21 Janvier 1917, la Chambre a rejeté le decret-loi accordant une solde supplémentaire aux officiers des troupes ottomanes engagées dans les pays alliés à la Turquie.

(Dustour, même Vol. p. 142.)

(*d*) Par une décision du 23 Janvier 1917, la Chambre a rejeté un décret-loi du 11 Octobre 1916 rélatif à l'incorporation (dans l'armée) de jeunes gens n'ayant pas l'âge requis pour le service militaire.

(Dustour, même Vol. p. 142.)

(*e*) Par une décision du 6 Février 1917, la Chambre a rejeté un décret-loi du 3 Mai 1916, concernant le mode de perception de la dîme.

(Dustour, même Vol. p. 177.)

(*f*) Par une décision du 15 Février 1917, la Chambre a rejeté un décret-loi du 11 Octobre 1916, relatif à l'exemption douanière des matériaux destinés à la construction de divers chemins de fer.

(Dustour, même Vol. p. 231.)

(*g*) Par une décision du 9 Décembre 1918, la Chambre a rejeté deux décrets-lois des 3 Juin 1918 et 19 Août 1918 portant allocation d'un crédit extraordinaire de 5,000,000 livres turques pour les provinces recouvrées.

(Dustour, Série II, Vol. XI, p. 68.)

Elle a rejeté ces deux décrets-lois en spécifiant que sa décision était motivée par la violation des articles 36 et 30 de la Constitution.

38.—Ces décisions montrent aussi l'inexactitude de l'opinion qui, à la suite d'indications contraires à la verité, a été exprimée, à propos des décrets-lois ottomans, par la Cour de Justice internationale de La Haye dans son jugement du 17 Mars 1934 relatif à l'affaire des Phares.

(Page 22, lignes 39 et 40 du jugement.)

39.—Mais, de plus, contrairement à ce qui est déclaré dans ledit jugement (même page, lignes 41 et 42), des reproches ont été adressés très fréquemment au gouvernement ottoman à l'occasion des décrets-lois promulgués en violation de l'art. 36 de la Constitution.

Mieux encore, le gouvernement, à la suite des reproches faits par plusieurs députés, a dû prendre—après des explications embarrassées, l'engagement de ne plus promulguer de tels décrets-lois.

Ces reproches et cet engagement apparaissent de manière éclatante à la lecture du compte-rendu de la séance de la Chambre en date du 26 Novembre 1331/1915, pp. 74–76.

Ce compte-rendu étant particulièrement édifiant, le soussigné ne croit pas nécessaire de citer les nombreux comptes-rendus de la Chambre et du Sénat, où lesdits reproches ont été formulés, parfois en termes très sévères.

Conclusion.

40.—En présence de la revendication des héritiers d'Abdul-Hamid, portant sur la terre de Mouharraka, et, généralement, devant les réclamations desdits héritiers, portant sur les biens et propriétés visés dans les Iradés de 1908 et 1909, il semble que les thèses de la Défense pourraient être—très brièvement—ainsi résumées:

(*a*) Les héritiers n'ont pas de titre sur la terre de Mouharraka.

Le titre, dont ils se prévalent, n'est d'aucune valeur, vu notamment qu'il fournit lui-même la preuve que ladite terre avait été usurpée par Abdul-Hamid.

Les héritiers ne sauraient donc invoquer les dispositions d l'article 66 de la Land (settlement of Title) Ordinance du 30 Mai 1928, dont le seul objet est de *restaurer un droit omis*, et non point de *consacrer la violation du droit*.

(*b*) Aux termes de l'art. 60, al. 2 du Traité de Lausanne du 24 Juillet 1923, les Etats successeurs de l'ancien Empire ottoman ont acquis de plano comme il a été démontré dans la Consultation du soussigné (para. 22–31)—la propriété des biens et propriétés qui avaient été transférés à l'Etat ottoman par les Iradés de 1908 et 1909.

(*c*) L'Iradé de 1908 a déterminé les biens et propriétés qu'il avait pour objet de transférer à l'Etat.

L'Iradé de 1909 a ordonné, de façon générale, que tous biens et propriétés, inscrits au nom d'Abdul-Hamid depuis 1293/1876, seront transférés à l'Etat.

Dès lors, pour toutes réclamations des héritiers, concernant une propriété jadis enregistrée au nom de cet ex-Sultan, le seul rôle qui incombe aux Etats successeurs est le suivant:

Rechercher si cette propriété est ou n'est pas parmi celles visées dans les Iradés.

Dans l'affirmative, les héritiers n'y ont aucun droit.

Dans la négative, seront applicables les dispositions du dernier alinéa de l'art. 60 précité.

(*d*) Subsidiairement, la Défense démontrerait que les propriétés d'Abdul-Hamid étaient des propriétés usurpées;

qu'en vertu de la règle traditionnelle régissant de tout temps,—avant comme après la Constitution ottomane—la dévolution des biens des Sultans déposés ou décédés, ces biens appartenaient de droit au Sultan successeur;

que, pour ces motifs, il serait absurde de prétendre que l'Iradé de 1909, promulgué par le successeur d'Abdul-Hamid, était un acte de confiscation;

qu'au surplus, les Iradés de 1908 et 1909 avaient le caractère d'Acts of State, de lois ottomanes;

que, contre celles-ci, il n'existait aucune voie de recours devant une juridiction quelconque;

que l'Etat ottoman a fait, effectivement, acte de propriétaire des biens-iradés;

que l'Etat ottoman a payé les dettes d'Abdul-Hamid, bien que ce dernier fût des plus formidables accapareurs et tyrans que le monde ait connus;

que les Iradés ont été consacrés par plusieurs traités internationaux où il en a été fait application;

que le décret-loi du 8 Janvier 1920, qui a prétendu annuler les Iradés, était dépourvu de toute valeur juridique, et qu'il était inopérant, spécialement dans les territoires de l'ancien Empire ottoman, occupés par les Puissances alliées.

Le soussigné croit pouvoir exprimer la certitude que les thèses ci-dessus, dûment étayées de textes, arguments et témoignages, seraient approuvés par tout tribunal consciencieux, ayant le souci d'assurer le triomphe de la justice et de la morale.

B. HALADJIAN.

Paris, le 15 Juin, 1939,
26, rue Nungesser et Coli.

ABDUL-HAMID.

Note sur les débats de la Grande Assemblée Nationale de Turquie relatifs à la loi du 3 Mars, 1924.

1.—Par une loi du 3 Mars 1924, mentionée dans la Consultation du soussigné en date du 12 Septembre 1936, la Grande Assemblée Nationale de Turquie a décidé,—entre autres dispositions—que les biens immobiliers, inscrits au nom des Sultans et situés dans la territoire de la Turquie, sont acquis à la nation (art. 8), et que les propriétés impériales, antérieurement transférées à la nation, sont également acquises à celle-ci (art. 10)

2.—Le soussigné ayant suggéré qu'il pourrait être utile de consulter les délibérations à la suite desquelles la dite loi fut votée, l'honorable Treasury Solicitor a bien voulu transmettre au soussigné le Compte-rendu officiel de la séance de la Grande Assemblée Nationale, du 3 Mars 1924, au cours de laquelle ces délibérations et ce vote ont eu lieu.

3.—Une lecture attentive de ce Compte-rendu a permis au soussigné de faire les constatations suivantes:

(*a*) A la date du 2 Mars 1924, le deputé Sheikh Safvet Efendi et plusieurs de ses collègues ont soumis à la Grande Assemblée Nationale un proposition de loi qui est devenue la loi du 3 Mars 1924.

(*b*) Dans la discussion générale de ladite proposition de loi, le deputé Ekrem Bey a fait, en ce qui concerne Abdul-Hamid, la declaration ci-après (page 31 du Compte-rendu):—

"... L'homme dénommé Sultan Hamid est de ces criminels dont le crime ne s'est "pas limité à anéantir Midhat Pasha (l'auteur de la Constitution de 1876) et tant d'autres "personnes. Il a déterminé la ruine d'une nation. Nous en subissons encore la "peine ...."

Ce témoignage corrobore ceux qui ont été rapportés dans la susdite Consultation et dans le Mémoire additionnel du soussigné, en date du 7 Avril 1939.

(*c*) La discussion générale a été relativement brève, et, le soussigné n'y a pas rencontré, au sujet d'Abdul-Hamid, de déclaration autre que celle ci-dessus.

(*d*) L'art. 1er, qui concerne l'abolition du Caliphat, a fait l'objet d'une très longue discussion qui n'intéresse pas les affaires Abdul-Hamid.

Quelques-uns des autres articles ont provoqué de bref débats. Mais les art. 8 et 10 ont été adoptés sans débat.

Ainsi, ce qui reste à retenir des discussions afférentes à la loi du 3 Mars 1924, c'est seulement la déclaration précitée d'Ekrem Bey.

B. HALADJIAN.